IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

CHURCH OF SCIENTOLOGY, INTERNATIONAL,
Plaintiff/Respondent,

vs.

GERALD ARMSTRONG,
Defendant/Appellant.

NO. A075027

CLERK'S TRANSCRIPT ON APPEAL

FROM A JUDGMENT MADE AND ENTERED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

VOLUME 33

For the Plaintiff/Respondent:

Andrew Wilson, Esq.
WILSON, RYAN & CAMPILONGO
115 Sansome Street, 4th Floor
San Francisco, CA 94104

For the Defendant/Appellant (In Pro Per):

Gerald Armstrong
715 Sir Francis Drake Blvd.
San Anselmo, CA 94960

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

DEPARTMENT 1

CHURCH OF SCIENTOLOGY, INTERNATIONAL,)
Plaintiff,)
)
vs.)
)
GERALD ARMSTRONG,)
Defendant.)
)

No. 157680

GARY W. THOMAS	JUDGE
JOHN P. MONTGOMERY	COURT EXECUTIVE OFFICER
ELAINE PASSARIS	REPORTER

For the Plaintiff:

Andrew Wilson, Esq.
WILSON, RYAN & CAMPILONGO
115 Sansome Street, 4th Floor
San Francisco, CA 94104

For the Defendant (In Pro Per):

Gerald Armstrong
715 Sir Francis Drake Blvd.
San Anselmo, CA 94960

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Gerald Armstrong
715 Sir Francis Drake Boulevard
San Anselmo, CA 94960
(415)456-8450
In Propria Persona

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NORTHERN DIST. OF CA.
SANTA ROSA, CA.

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

9129

In re

GERALD ARMSTRONG,

Debtor

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California non-profit religious corporation,

Plaintiff,

v.

GERALD ARMSTRONG,

Defendant.

Case No. **95-10911 aj**

Chapter 7

Adv. No. **95-1164**

GERALD ARMSTRONG'S SECOND AMENDED ANSWER

INTRODUCTION

Plaintiff Scientology organization has been judicially declared paranoid and schizophrenic. Scientology's paranoia and schizophrenia are a reflection of its founder L. Ron Hubbard. Hubbard was judicially declared to be a pathological liar, greedy, lustful of power, vindictive, and aggressive against persons he perceived as disloyal or hostile. Out of his paranoia and schizophrenia, Hubbard concocted and adopted a philosophy and practice of opportunistic hatred as his way of dealing with persons so perceived. Out of his paranoia and schizophrenia

Hubbard targeted and labelled persons so perceived "suppressive persons," (or "SPs") and "enemies." At a certain point Hubbard called his philosophy and practice of opportunistic hatred, "fair game," and he formed an organization, which he called a "church," to carry out his "fair game" intentions, plans, programs, operations and orders. He used the resources and personnel of the Scientology organization to carry out antisocial and criminal acts against individuals and groups designated as "enemies." Hubbard's "fair game" policy, which has been several times judicially condemned, states: "ENEMY - SP Order. Fair game. May be deprived of property or injured by any means by any Scientologist without the discipline of the Scientologist. May be tricked, sued or lied to or destroyed." Out of his paranoia and schizophrenia Hubbard further instructed his "church" to use society's legal systems to harass and ruin perceived "SPs" or "enemies." It has been judicially declared that his Scientology organization has a history of violating and abusing its own members' civil rights, and harassing and abusing those persons not in the organization whom it perceives as enemies. It has been judicially declared that the Scientology organization is fully capable of intimidation or other physical or psychological abuse if it suits their ends. Hubbard and Scientology, while knowing that defendant Armstrong was neither an "SP" nor an "enemy," as said terms are used and defined in Scientology's policies, orders and other writings, so labelled him, and subjected him to "fair game" until Hubbard died in 1986. Scientology's new leader David Miscavige has continued its "fair game" doctrine until the present, and his Scientology organization continues to the present to label and target

Armstrong as an "SP," an "enemy," and "fair game." The instant complaint by Scientology is the product of Miscavige's and Scientology's paranoia and schizophrenia manifested in their "fair game" doctrine and attacks. Miscavige and Scientology have known throughout the time period covered by the matters herein of the judicial condemnation of "fair game." Miscavige and Scientology are harassing Armstrong with judicial enforcement of an illegal and evil contract, his signature on which they obtained by extortion, fraud and the abuse of his common decency and trust. From the time of signing of said contract to the present, Miscavige and Scientology have subjected Armstrong to a campaign of covert and overt character assassination (which Scientology calls "black propaganda"), stalking, threat, lies and litigation. Scientology has a reputation in its legal affairs for dirty tricks, threat, dishonesty, deception, attrition and overwhelm which is widely known and feared by this country's attorneys and by the media. Scientology also has a widely known reputation for using bullying and dishonest private investigators to harass perceived opponents pursuant to "fair game" and for shielding their aggressive and corrupt activities behind the work product privilege of corrupt attorneys. All of Armstrong's actions which Scientology claims are breaches of its "contract" were in logical, legal response to Miscavige's and Scientology's dangerous and damaging "fair game" activities. Armstrong's actions have all been justified and privileged, and Scientology has not been damaged in any way by his actions. The instant complaint is one part of Miscavige's and Scientology's program to misuse the legal system to harass and ruin Armstrong.

Miscavige's and Scientology's misuse of the legal system is one front in their war on Armstrong, the purpose of which is his demise. This is not a purpose for which the legal system and the nation's courts may be used.

For the fleeting illusion of power and wealth Hubbard sold his soul to the world's dark force of evil. Out of his paranoia and schizophrenia Hubbard considered himself anti-Christ and devised an anti-Christian philosophy and organization to achieve his anti-Christian goals of world power and wealth. Armstrong is a Christian. Armstrong believes he has been called by God to bring His Light to Scientology's benighted and enslaved souls. Armstrong believes his experiences are God's and that he cannot be silenced by man's courts concerning his experiences or about Scientology's dark, secret and anti-Christian nature. Armstrong believes that Scientology is dangerous to himself, others, to wisdom, and to goodness itself, and that Scientology's dangerousness is reduced by bringing its dark, secret and anti-Christian nature to light, and by not succumbing to the threat and of its evil "fair game" doctrine.

HISTORY

Armstrong was in Scientology from 1969 through 1981. Throughout those years he believed Hubbard's and Scientology's public representations about their history, credentials, research, and benevolent intentions. Armstrong accepted Hubbard's and Scientology's guarantees of higher intelligence, greater freedom, increased abilities and elevated ethics that they made for their psychological processing, or "auditing." Armstrong gave Hubbard and Scientology his allegiance, support and life, which Hubbard and Scientology, out of their paranoia and schizophrenia, systematically and callously abused.

From 1971 through 1981 Armstrong was in the Sea Organization, one of the two administration and power arms through which Hubbard controlled Scientology around the world. The other power arm of Scientology that Hubbard used to maintain control was the Guardian's Office, headed by his wife Mary Sue Hubbard. Armstrong worked with Hubbard for four years on his ship, the "Apollo," and held the positions of public relations officer, legal officer and intelligence officer. Armstrong later was in charge of Hubbard's telex and mail traffic at a base in Florida, and then Hubbard's household staff at a base in southern California. Throughout his Sea Org experience Armstrong gained a knowledge of organization structure, function, control, finances, personnel, policies and operations. During 1980 and 1981 Armstrong assembled an archive of Hubbard's personal records, correspondence and writings of all kinds, and did the research for a Hubbard biography. Armstrong provided Hubbard's personal archive materials to non-Scientologist writer Omar V. Garrison who had been contracted to write the biography.

Through his study of Hubbard's archive, and the integration of his knowledge and experiences gained throughout his years in Scientology, Armstrong discovered and documented the fact that Hubbard and Scientology had systematically and callously lied in their public representations about their history, credentials, research, benevolent intentions, and guarantees for auditing. Armstrong discovered and documented the facts that Hubbard claimed to be a civil engineer and nuclear physicist who excelled is his university education; yet he had actually failed his few courses in physics and dropped out of university without completing his second year. Armstrong discovered and documented the facts that Hubbard claimed that it was a matter of medical record that he had twice been pronounced dead; yet no such incidents had happened beyond Hubbard's admitted nitrous oxide hallucination of his death during a tooth extraction. Armstrong discovered and documented the facts that Hubbard claimed that his naval service was glorious, that he had been crippled and blinded in action, and that he had cured himself at the war's end of his battle wounds with his new mental technology "Dianetics;" yet Hubbard's naval career was something different from glorious, he was not crippled nor blinded in action, he feigned his medical conditions to get out of the service and to obtain a disability pension, and, decades after he claimed to have cured himself and, to everyone's amazement, have been given a perfect score on a mental and physical tests, he continued to draw a disability pension for his feigned injuries.

Armstrong discovered that Hubbard lied about his family, including falsely denying his bigamous second marriage and the paternity of his second daughter. Armstrong discovered that Hubbard, while claiming to have been sent by the US Navy into a black magic ring to break it up, had actually been a participant in the black magic cult and its rituals, including a blood ritual. Armstrong discovered that Hubbard, while claiming to have based and developed Scientology on his pure scientific research, had actually based and developed it on his decision for, and use of, neo-satanic power, for which he had joined the black magic cult, then headed by the "great beast," Aleister Crowley.

Armstrong discovered that Hubbard's claims of altruistic and benevolent motives, that, e.g., he, his philosophy and organization were working to free mankind, were false. When starting Dianetics and Scientology Hubbard programmed himself with the command that all men were his slaves, and through the ensuing years treated them as such. Armstrong discovered that Hubbard was greedy, lustful of power, vindictive, and aggressive against persons he perceived as disloyal or hostile. Armstrong discovered that contrary to Hubbard's and Scientology's assertions that Hubbard received no money from Scientology and was paid less than an average staff member, Hubbard had control of all Scientology monies and bank accounts and had unilaterally transferred many millions of dollars to his own accounts.

Armstrong discovered that Hubbard's and Scientology's system of "ethics" and "justice" procedures, were neither ethical nor just, but was really a kangaroo court system which served Hubbard's purposes of maintaining ironfisted, dictatorial control, obliterating any criticism, and keeping staff members and Scientologists in fear and suppressed. Armstrong discovered that Hubbard's promise of an increase in intelligence quotient of one point per hour of auditing was false (Armstrong had by then had over one thousand hours) and that in fact the further one went on in Scientology the less intelligent one became. Armstrong discovered that contrary to Hubbard's and Scientology's promise of the sanctity and confidentiality of statements made by people being audited, these statements were not kept confidential but could be and were used by Hubbard and Scientology to control and harm the people if it served Hubbard's and Scientology's antisocial purpose.

Armstrong discovered that Hubbard's and Scientology's promise of higher ethical standards as a result of undergoing auditing and adherence to Scientology was false and that auditing and Scientology produced in the adherents who had risen to the apex of its organizational pyramid dishonesty, stupidity, antisocialness and aggressiveness. Armstrong discovered that contrary to Hubbard's and Scientology's assertion that auditing and other Scientology practices kept families together and improved marital relations, in fact they turned parents and their children against each other and broke families apart. Armstrong discovered that contrary to Hubbard's and Scientology's assertion that auditing made people sane and able, cured diseases such as cancer and guaranteed superior physical health, there was in fact an inordinate number of suicides and psychotic episodes among people who had been audited and all auditees were generally delusional. Scientologists were as sick and died of cancer and other diseases as readily as anyone else, and were generally unhealthy. Armstrong discovered that Hubbard himself was addicted to drugs, in poor physical health, and often pathologically sullen or enraged, and Armstrong knew that Hubbard and Scientology hid these conditions from the world. Armstrong discovered that rather than admitting the damage and failures of auditing Hubbard and Scientology attacked any critics and attacked the persons who had been damaged. Armstrong discovered that Hubbard had relabeled his "psychotherapy" a "religion" to avoid having to make good on his "scientific guarantees." Hubbard called this idea the "religion angle."

Armstrong discovered that Hubbard and Scientology consistently lied in judicial proceedings and required that their adherents lie for them, including lying about Hubbard's control of Scientology, his control of Scientology funds, his control of the Guardian's Office intelligence operations(11 GO staff, including Mary Sue Hubbard, were convicted of Federal crimes and sentenced to prison as a result of an FBI raid on Scientology's intelligence bureaus in 1977) organization structure, the organization's ability to communicate with Hubbard, their intentions, and neo-satanic origins, attitude and practices. Armstrong discovered that Hubbard and Scientology, rather than face the truth about their origins, attitude and practices, sought to subvert the justice system through dirty tricks, lies, threat, deception, attrition and overwhelm.

Armstrong discovered that he had been brainwashed by Hubbard and Scientology, and that Scientologists everywhere are subjected to the identical brainwashing. Armstrong discovered that he had been cruelly abused by Hubbard and Scientology, and that Scientologists everywhere are similarly abused. Armstrong discovered that Hubbard and Scientology uses a system of punishment, fear, control of language, control of information, control of environment, time and human contact, electronic-assisted interrogations, imprisonment, and control of thought, which is able to achieve complete dominion over the minds and lives of Scientologists to their detriment. It brings them to support, defend and give their lives to the very spiritless system which hates them and means them harm. Armstrong discovered that the truth concerning Hubbard's and Scientology's origins, history, actual intentions, practices, operations and efficacy was kept from Scientologists, and that anyone who sought to bring that truth to Scientologists was ruthlessly attacked.

When Armstrong sought while inside to have Scientology correct its lies and abuses he was threatened and attacked. He left Scientology and was declared an "SP" and became "fair game." Hubbard's and Scientology's black propaganda "SP Declare" on Armstrong falsely accused him of crimes and lying about Hubbard. Hubbard personally ordered that Armstrong be destroyed. Armstrong contacted Boston attorney Michael J. Flynn. Armstrong obtained documents from Garrison which he thought would be needed to defend himself, and he sent these to Flynn.

From 1982 through 1984 Scientology's "fair game" acts toward Armstrong included spying on him and his wife; hiring private investigators to spy on and harass them; having a private investigator assault Armstrong, and another hit him with a car and attempt to involve him in a freeway "accident;" suing him; attempting to have him falsely charged with theft; subjecting him to a black propaganda and stalking campaign. Armstrong filed a cross-complaint against Scientology for fraud and intentional infliction of emotional distress.

In 1984, following a thirty day trial in Los Angeles Superior Court, a decision was rendered by Judge Paul G. Breckenridge, Jr. in Armstrong's favor in Scientology's case from which his cross-complaint had been severed. This decision, which was affirmed on appeal in 1991, is attached hereto as Exhibit A.

After the 1984 trial through 1986 Scientology's "fair game" acts toward Armstrong included a Scientology private investigator threatening to murder him; filing false contempt of court charges against him; attempting to have the FBI charge him based on false information; attempting to have the Los Angeles District Attorney bring charges against him based on false information; culling and disseminating his statements made in auditing; paying agents to write false affidavits against him; using his friends to set him up in a covert intelligence operation; illegally videotaping him; attempting to entrap him in commission of a crime; subjecting him to further black propaganda, including international publications falsely accusing Armstrong of crimes against humanity.

Scientology also subjected attorney Flynn to years of "fair game," which included suing him or his office more than a dozen times; infiltrating his office; threatening his career and family; paying known criminals for declarations falsely accusing him of crimes; framing him with a crime; attempting his assassination; and subjecting him to an international stalking and black propaganda campaign.

In late 1986, out of desperation to get away from the threat of Scientology's "fair game" operations, Flynn agreed with Scientology to a "global settlement" of all of the cases in which he was then involved against the organization, including Armstrong's cross-complaint, then set for trial at the beginning of 1987. Flynn was to be paid a lump sum which he was to divide between his clients and himself. Armstrong agreed to a monetary figure with Flynn to settle his cross-complaint. Scientology and Flynn worked out and agreed to the language of the settlement documents before Armstrong, who was then working for Flynn, was shown any papers. Armstrong was flown from Boston to Los Angeles, and other Flynn clients were flown to Los Angeles for the settlement, before Armstrong saw the documents he was expected to sign, and was told by Flynn that Scientology would not change the documents. Armstrong was broken hearted when he read the settlement documents. He had not been involved in any negotiations or settlement discussions, and he felt ganged up on.

He protested to Flynn that it was impossible to live by the "settlement contract;" that he would not agree to the $50,000 per statement liquidated damages clause; that the contract was just more "fair game." Flynn stated to Armstrong in response to Armstrong's protest that the settlement contract "isn't worth the paper it's printed on;" that Armstrong couldn't "contract away [his] constitutional rights;" that "it's unenforceable." Flynn pointed out to Armstrong the clauses concerning Armstrong's dismissal of his cross-complaint and his release of Scientology up to that date; and Flynn told Armstrong, "That's what they're paying you for." Flynn said that all of his clients, some twenty people, were depending on Armstrong to sign; that most had already signed and if Armstrong didn't sign everyone would be subjected to more "fair game;" that Scientology had ruined Flynn's marriage and life and he had to get out of the litigation; that Scientology would continue to make Armstrong's life miserable. Flynn said that Scientology had promised to cease all "fair game" attacks on Armstrong and everyone else, and that the purpose of the "settlement contracts" was to give Scientology the opportunity they said they needed to "turn over a new leaf." In order to relieve everyone involved from the threat of "fair game," to give Scientology the opportunity they said they needed to reform, and because of his faith in God, and the confirmation by Flynn that the "contract" was unenforceable, Armstrong did go through the spectacle of a videotaped signing.

Following the settlement, and before Armstrong responded in any way, Scientology continued to subject him to "fair game," including filing affidavits accusing him of crimes and of being an agent provocateur of the United States government; publishing distorted versions of his Scientology history; using documents which Scientology had requested be sealed in the Armstrong case to attack him; distributing copies of edited versions of the illegal videotapes of Armstrong to the media internationally; and threatening him six times with being sued if he responded to any attacks. Scientology also continued to subject other people to "fair game," in violation of its promise through Flynn that it was ceasing all "fair game" activities.

Armstrong attempted to live by the spirit of settlement, and although deeply saddened and threatened by Scientology's continuing attacks had not responded, but had tried to live his life away from the Scientology "fair game" war. Armstrong wrote, drew, had remarkable ideas, and formed The Gerald Armstrong Corporation with wonderful hopes and great expectations. In late 1989, however, after a series of threats from Scientology lawyer Lawrence Heller following Armstrong's being served with a deposition subpoena in a case against the organization, Armstrong concluded that he had to do something to defend himself, and to correct what he saw as an obstruction of justice, which the "settlement contracts" and Scientology's enforcement thereof were working in the legal arena. Heller threatened Armstrong that if Armstrong testified about his knowledge of Hubbard and Scientology, even though Armstrong had been subpoenaed to testify, Scientology would consider such testimony a breach of the "contract" and would sue him. Armstrong researched his rights and responsibilities and concluded that he had a duty to oppose known obstruction of justice. Armstrong petitioned the California Court of Appeal to be able to file a response in the appeal Scientology had been able to maintain from the

Breckenridge decision. Armstrong's filings in the Court of Appeal in 1990 contain his declaration detailing Scientology's post-settlement torts and violations. The Court of Appeal granted Armstrong's petition, he filed a respondent's brief, and the Court affirmed Breckenridge. Following the California Supreme Court's denial of review, Scientology filed a motion in the Court of Appeal to seal the record on appeal. Armstrong opposed the motion, and the Court of Appeal denied it. The complete trial transcript, which contains ten days of Armstrong's testimony about his Scientology experiences up to 1984, is a public document.

In August, 1990 Armstrong was greatly moved by the buildup in the Middle East toward war, and the general condition of man. Armstrong prayed to God for guidance as to what he should do, and received the word of God to give away his worldly wealth. Armstrong gave his possessions to those whom he believed had a need for them as put in his heart by God, forgave debts owed to him, and determined to go where God would have him go and do what God would have him do; which he believed was to help where his help was asked for. For the next year God had Armstrong, inter alia, offer himself to resolve the Middle East conflict, do some house painting and carpentry work, deal with the pending appeal, attempt to correct Scientology's subversion of the legal system, agree to help the victims of Scientology who asked for his help, and offer himself to resolve the Scientology conflict in which he had been drawn by Scientology's attacks.

Scientology's "fair game" attacks on Armstrong following his responding in Scientology's appeal of the Breckenridge decision include, but are not limited to, secretly videotaping him; suing him four times; attempting to have him jailed for contempt of court based on Scientology's mischaracterization of his actions and manufactured charges; filing declarations in various courts containing false charges, and using the "settlement contract" to prevent him from responding or punish him for responding; using a paid agent to spread the false rumor that Armstrong has AIDS; disseminating to the media packs of black propaganda which provide Scientology's false version of Armstrong's experiences, including lies that he testified falsely at trial in 1984, that he has adopted a degraded lifestyle, that he is connected to a referral agency for kidnapping, that his defense in the 1984 trial was a sham and a fraud, that the Los Angeles Police Department authorized videotaping Armstrong, that he wanted to plant fabricated documents in Scientology files and tell the IRS to conduct a raid, that he wanted to plunder Scientology for his own financial gain, that he never intended to stick to the terms of the "settlement contract", that Armstrong's motives are money and power, that he was incompetent as a researcher, that he perjured himself about surrendering documents to the court, that he wanted to orchestrate a coup in which members of the US government would wrest control of Scientology; publishing black propaganda about Armstrong without stating its source which provide Scientology's false version of Armstrong's experiences including the lies that Armstrong was formerly a heavy drug pusher, that a Marin Independent Journal photo showed him in the nude, that he is psychotic and lives in a delusory world; charging falsely in a letter to the press that Armstrong had distinguished himself by posing naked in a newspaper; attempting to cause Armstrong trouble with the IRS by writing black propaganda letters about him; distributing packs of black propaganda which attack his lawyer, Ford Greene, and Judge Breckenridge.

Armstrong has worked with attorney Greene since August, 1991. Throughout that period Scientology has attempted by overt means through misuse of the courts and by covert means to prevent him from working with Greene and from defending himself. Scientology employed a covert operative, whom Scientology had infiltrated into Greene's office, to develop a black propaganda attack that Armstrong and Greene were involved in a homosexual relationship.

Throughout its legal attacks on Armstrong Scientology has proclaimed that with the "settlement contract" it sought peace. Scientology also interprets the "settlement contract" to mean that it can say whatever it wants about Armstrong, no matter how false, obnoxious or evil and that he may not respond. Scientology claims that if he does respond in any way he is liable for $50,000 in liquidated damages. Scientology, after much forum shopping, and much "fair game," was able to deceive one judge, who did not understand, into accepting its interpretation of the "settlement contract" and ruling against Armstrong. Scientology interpreted this judge's ruling to mean that Armstrong owed Scientology $100,000. Scientology at the same time intimidated Armstrong's attorney, Ford Greene, into getting out of the Armstrong case. Scientology had subjected Greene to years of "fair game" which included infiltrating a covert agent into his office to steal his records and cause trouble; hatching a plot with the covert agent to have Greene killed; having the agent execute false declarations about Greene;

filing five spurious bar complaints against Greene; operating at least two of Greene's clients as their own agents and paying them to execute false declarations against Greene and breach their contract with him. The claim by Scientology for $100,000, Armstrong's being without an attorney, without money, and without the resources and skills necessary to defend himself, brought Armstrong to file for bankruptcy. Scientology has seized the opportunity to file the instant complaint.

Throughout Scientology's legal attacks on Armstrong it has intimidated Flynn into not coming forward to assist Armstrong. Flynn is not only Armstrong's attorney, he is his good friend. Flynn says that the contract is evil and that Scientology is evil; and he wants to help Armstrong. Flynn says that he signed a contract with Scientology to not assist Armstrong, and, while acknowledging that his "contract" with Scientology is illegal, he says that he knows that his life will be ruined even more than it has been by Scientology if he comes forward to help.

Armstrong maintains that Scientology's interpretation of the "settlement contract" is unconscionable and unamerican, and should be opposed with all strength. Because there are dozens of these "contracts" among first hand witnesses to Scientology's criminal and tortious practices, and because of Scientology's "fair game" use of the "contract" against Armstrong, a terrible injustice is being abetted by our courts, which should be opposed with all strength. Armstrong also maintains that for one party to a "settlement contract," which is supposed to be essentially a peace accord, to be able to continue to shoot at the other party, who is wounded, has been disarmed and is not being allowed to defend himself in any way, is not peace at all but a satanic hunting trip. The "settlement contract" is a permit for hunting humans.

Armstrong was paid in settlement by Scientology for their years of psychological cruelty, threat and stalking. Scientology did not learn its lesson but continued its cruelty, threat and stalking of Armstrong, a person already psychologically hurt and altered beyond belief by the cruelty, threat and stalking Scientology promised to cease. Armstrong performed his part of the 1986 settlement; he dismissed his cross-complaint, released to Scientology all evidence from his case, removed himself from controversy, and gave Scientology the time and freedom it said it wanted to cease "fair game." Scientology, knowing that they had compromised and removed Armstrong's attorney, failed to perform their part of the settlement, but continued "fair game" against Armstrong, whom they had psychologically wounded and, they thought, rendered defenseless. Scientology, in their paranoia and schizophrenia, which are the inevitable product of the decision for and prolonged use of neo-satanic "power," failed to consider God, from Whom all healing of minds, defense and victory come.

In 1991 Armstrong became a Christian. Armstrong had, since leaving Scientology, come to believe he was guided by God, and he sought to be guided in all circumstances in which he found himself. Once its adherents become sufficiently brainwashed Scientology does not permit them to believe in God, labels and treats anyone who believes in God as "psychotic," and enforces the satanic idea that God is an "implant," a false idea installed by pain and electronics in man's mind to enslave him. Scientology also teaches that Jesus Christ, the whole Gospel story, and Heaven are implants designed to enslave man, and that only Scientology has the way to free mankind from the enslavement of Christianity or other religious beliefs.

Scientology promotes to Christians and non-Christians that it is compatible with Christianity, that it holds the Judeo-Christian Bible as a holy work, and that it has no argument with the belief that Jesus Christ was the Savior of Mankind and Son of God. Scientology has distributed promotional materials containing these representations to every member of Congress, to libraries, to the media, to educators, to judges, and to people of influence across this country. Scientology withholds from the public its actual enforced beliefs about God, Christ, Heaven and the Bible. Armstrong believes this is religious fraud, and dangerous to everyone lured into Scientology, those already held by its brainwashing system, and society itself. Armstrong also believes that Scientology's "creed" is a religious fraud because Scientology, under Hubbard's and Miscavige's control, has never acted in accord with it. Scientology systematically abuses its members civil rights, and seeks to remove by whatever means the same civil rights of its non-Scientologist enemies."

Scientology promotes actively and aggressively and uses the public postal system, public forums and public media for its promotions. Scientology uses big name celebrities in its promotions, such as John Travolta, Kirstie Alley, Ann Archer and Tom Cruise. Scientology does not permit any of its celebrities to make public their knowledge of Scientology's anti-Christian, anti-religious inner nature, its fraudulent promises and public lies, abuse of human beings, and dangers to families and children. Surveys done in the past two years by FACTNet, a cult victims advocacy organization has revealed that while vastly overstating its actual membership Scientology has had an inordinate number of suicides, unexplained deaths and psychotic episodes by people undergoing auditing. If any celebrity acknowledged these evils he or she would become "fair game."

Armstrong sees that Scientology uses its tax-exempt wealth to violate his and other civil rights. Armstrong believes that this is not a legal purpose and not a purpose for which tax-exempt funds can legally be used. Armstrong sees that Scientology tricks and extorts huge sums of money from people it gets in its system for something of no value. This money will be used to pay lawyers to attack the same people and those who sought to bring to light or curtail the abuse. Armstrong believes that Scientology obtained its tax-exempt status in 1993 by illegal means. Armstrong believes that the Internal Revenue Service and the United States government agencies responsible were derelict in their duties in granting such tax exempt status. Armstrong believes that Scientology's leadership is involved in white collar crime, including securities scams and extortion.

Scientology will not acknowledge that God works in people's lives. To do so would be a violation of policy, punishable in "ethics," and being labeled and treated as "psychotic." The attorney executing Scientology's complaint, Laurie Bartilson, is a Scientologist. She has executed several documents in the State case which contain false statements about Armstrong. She attempted through false statements to have him jailed for contempt of court. She is completely under the power of David Miscavige. The complaint is colored by her required hatred of Armstrong.

God in this litigation is pointing out gently that He is in charge, and that satan is a bad belief in which faith should not be put because faith in satan is always betrayed. The undeniable fact is that God led Armstrong through his whole life to here; and there is no evidence whatsoever with plaintiff or anyone else that He will not lead Armstrong from here on. Miscavige and Scientology seek through power to bring into belief the illusion that Armstrong is obsessed with Scientology in order to excuse their obsession with him. They are faced with an overwhelming mountain of uncontroverted evidence that Armstrong gave away his worldly assets because he was so guided by God, and for no reason connected with Miscavige, Scientology or Hubbard. Without a jot of evidence they seek to con the world into believing that Armstrong renounced his possessions to facilitate his intended breaches of their hunting permit. God has used Armstrong for His purposes through a time when Miscavige, Scientology and Hubbard declared Armstrong "fair game," and attacked him out of their paranoia and schizophrenia. They have done everything they could that they thought could be argued as being within the law to attack and hurt him, and to hurt others, some of whom have been sent to him because they were hurt. Armstrong's actions in helping anyone are religiously motivated and completely protected by this country's and state's constitutions. Armstrong's experiences in or out of Scientology are sacred and the expression thereof cannot be suppressed in violation of these constitutions.

GENERAL DENIAL

Armstrong generally denies the allegations in Scientology's complaint.

SPECIFIC DENIALS

Armstrong denies that he is indebted to Scientology in any amount or in any way whatsoever.

1. Armstrong denies that he has engaged in a pattern of fraud and deceit of any form or nature whatsoever at any time. Armstrong denies that whatever he has or has not done mandates that his bankruptcy petition be dismissed without discharge. Armstrong denies that he has any legal debt to Scientology; and denies that whatever he has or has not done mandates that the illegal debt Scientology claims he owes it be deemed nondischargeable. Armstrong denies that he lied to anyone by failing to include his ownership in The Gerald Armstrong Corporation as part of his Schedule B. When Armstrong reviewed the petition, which had been prepared by computer program, and before filing the petition, he wrote in "The Gerald Armstrong Corporation" at paragraph 16 of the Statement of Affairs. At the meeting of creditors, and before being asked any questions, Armstrong volunteered the information that he owned 80 percent of The Gerald Armstrong Corporation. Armstrong had simply missed the very tiny line among many other very tiny lines on the Schedule B at the time he filed the petition. Armstrong has never at any time concealed The Gerald Armstrong Corporation or his relation thereto or ownership thereof. Armstrong understands that Scientology does not have much of a sense of humor. Armstrong lacks the information necessary to be able to admit or deny that in 1993 he testified that the assets of The Gerald Armstrong Corporation were worth $1 billion. Armstrong did testify at the start of 1994 that The Gerald Armstrong Corporation's value was in the neighborhood of $15 trillion.

Armstrong lacks the information necessary to be able to admit or deny that in 1994 he admitted under oath that he owned 80% of the shares of the stock in the corporation, and was its president and sole employee. Armstrong denies that, second, while testifying at a meeting of creditors, he asserted that The Gerald Armstrong no longer possessed any assets having any commercial value. Armstrong denies that he at any time failed to satisfactorily explain anything he had been asked to explain if he had a satisfactory explanation to give. Armstrong denies that he disposed of not only the $1 billion in assets claimed by The Gerald Armstrong Corporation. The loss in value of The Gerald Armstrong Corporation's assets was a direct result of Scientology's evil intention and illegal "fair game" actions to destroy Armstrong's reputation, work and life. Armstrong denies that he failed to satisfactorily explain how he disposed of the $518,000 he received as proceeds of the settlement of his lawsuit against Scientology. Armstrong testified in detail in the State case, despite such interrogation by Scientology being irrelevant, unwarranted and an invasion of his and others' privacy, as to what he did with the proceeds of the settlement with Scientology. Armstrong denies that he received at least $15,000 in large increments in 1992 and 1993. Armstrong denies that $15,000 can be received in large increments; whereas, e.g., $15 trillion, can be received in large increments. Armstrong denies that he failed to satisfactorily explain how he disposed of $15,000. Armstrong asserts, however, that such information is irrelevant to this action, and he is not required to provide such information to Scientology or to anyone. Armstrong denies that whatever he has done or not done renders him ineligible for discharge pursuant to

11 U.S.C. sections 727(a)(4)(A) and (5). Armstrong denies that he admitted under oath that he entered into an agreement with Scientology that he intended to breach. Armstrong performed Scientology's evil contract until Scientology's own "fair game" actions necessitated his responses in self-defense and in defense of others among Scientology's "fair game" victims. Armstrong desired peace and acted peacefully toward Scientology for three years. Scientology, however, did not want peace, but continued to threaten, stalk and attack Armstrong. Armstrong denies that he has repeatedly and maliciously breached the "agreement" entered into with Scientology. Scientology agreed to cease "fair game," but thereafter repeatedly and maliciously "fair gamed" Armstrong. Armstrong denies that his responses to Scientology's "fair game" resulted in the debt to Scientology which Armstrong seeks to discharge. The "success" of Scientology's "fair game" against Armstrong's attorneys, witnesses and friends, and against judges and the justice system, resulted in the "debt." Armstrong denies that he owes Scientology anything. Armstrong denies that whatever he has done or not done renders the illegal debt Scientology seeks to "collect" nondischargeable pursuant to 11 U.S.C. sections 523(a)(2)and (6).

JURISDICTION

2. Armstrong lacks the information necessary to be able to admit or deny any of the averments in this paragraph.

3. Armstrong denies each and every averment in this paragraph.

PARTIES

4. Armstrong denies that plaintiff herein is a California non-profit religious corporation. Plaintiff is a single body of

all Scientologist adherents world wide, all bound by the will, intentions, policies and orders of David Miscavige. Every unit, division, post, position, branch, bureau, network, corporate entity, director, office, as, e.g., Office of Special Affairs, "church," or any named or unnamed part world wide of all of what can "legally" call itself Scientology, and that body of people who may "legally" call themselves Scientologists, are under the complete control and domination of David Miscavige. Scientology and Scientologists are used by Miscavige to carry out his personal desires, including actions against individuals which are illegal and not activities for which the monies of non-profit religious corporations may legally be used. Miscavige's "official" role is that of head of "Religious Technology Center," which, "officially," was given the trademarks of "Scientology" by L. Ron Hubbard. Miscavige decides what is "Scientology" and who can be a "Scientologist." Any claim by plaintiff that there is not a unity of control between the entity it presents as plaintiff, the other parts of Scientology, and all Scientologists anywhere, under David Miscavige, should be disregarded. The obtaining of the tax-exempt status for plaintiff's several parts in 1993 was accomplished by fraud, extortion and government complicity and/or dereliction of its duties to this country's citizens. Miscavige has publicly claimed that he personally was responsible for the obtaining of Scientology's tax-exempt status from the government.

5. Armstrong admits that he is an individual, but denies that he has been a resident of the City of San Anselmo, County of Marin, State of California at all times relevant herein. Armstrong became a resident of the City of San Anselmo on or

about August 15, 1991.

ANSWER TO GENERAL AVERMENTS

6. Armstrong denies that he owes any legal debt to Scientology. Armstrong admits that the State Action is Scientology v. Armstrong, Marin County Superior Court No. 157680. Armstrong denies that eleven claims against Armstrong for breach of contract remain to be adjudicated. There are, according to Scientology's interpretation of what constitutes a "breach," millions of "breaches" by Armstrong remaining to be adjudicated. Armstrong denies that he is liable to Scientology for an additional liability claimed of $1,750,000 plus attorney's fees and costs. The truth is Scientology is liable to Armstrong for attorney's fees and costs and for damages as a result of its illegal, tortious, and outrageous "fair game" acts against him. Armstrong denies that Scientology's hunger for a permanent injunction is to prohibit Armstrong from further breaching certain terms of the "contract." Scientology's efforts are a smoke screen to hide the fact, and delay the judicial finding, that the "contract" is illegal and evil. Scientology is seeking to prohibit Armstrong from living his life in peace, and is seeking to destroy him through its "fair game" use of the power of the courts.

7. Armstrong admits that he signed Scientology's "contract" in December, 1986. Armstrong admits that it settled his cross-complaint against Scientology, but denies that it settled the litigation between Scientology and Armstrong because Scientology never intended by its "contract" to have the litigation settle, nor acted in a way which would allow a settlement. Scientology used the "contract" as a contract on

Armstrong permitting it to continue to attack Armstrong and continue to subject him and its other targeted "enemies" to "fair game" with imagined impunity.

8. Armstrong denies that he had been actively pursuing a career as an anti-Scientology "expert" and paralegal. Armstrong is an expert in Scientology's "theology," fraud and its philosophy and practice of "fair game." Armstrong is a paralegal. Armstrong was forced into litigating against Scientology and working as a paralegal for a lawyer litigating against Scientology by its "fair game" attacks and threat to his life and loved ones. Armstrong denies that he ever agreed that he would not disclose his knowledge or experiences in Scientology. Armstrong knew that it was impossible to not disclose such knowledge and experiences, and that the "contract" calling for such psychological enslavement was evil and illegal. Armstrong's attorney, moreover, advised Armstrong that the "contract's" condition prohibiting such disclosure was not worth the paper it was printed on and unenforceable, and that Flynn had also advised Scientology of that fact. Armstrong admits that the "contract" provides that Armstrong is to pay Scientology $50,000 per utterance.

9. Armstrong admits that Scientology sued him in February 1992 to enforce its illegal "contract," and sought and obtained a preliminary injunction; but denies that the preliminary injunction enforced portions of the "contract." Los Angeles Superior Court Judge Ronald Sohigian rewrote a portion of the "contract," and it was this rewritten portion which was "enforced" by the preliminary injunction.

10. Armstrong admits that, and that he has testified that,

in August, 1990, in answer to his prayer to God seeking guidance concerning whatever God sought for him at the time of and in consideration of the Middle East crisis, and generally and man's condition, God put the idea in his mind and heart to give away what he had; i.e, those things the "world" and "Scientology" consider valuable. Armstrong denies that he transferred real property valued at $530,000 and at least $35,000 in cash to his friend and lawyer, Michael Walton. In 1988 through 1989 Armstrong participated as an investor in the purchase of a lot in Sleepy Hollow, California, and the building thereon of a nice spec house. In early 1990, Armstrong, for various reasons unrelated to Scientology, purchased the house himself, along with Michael Walton, who, Armstrong admits, was his friend and lawyer. Armstrong made a downpayment of approximately $130,000, and that was his actual equity in the property, which was itself valued at approximately $530,000 at that time. After the completion of the building of the house, Armstrong, who was then living in another house, which he sold to purchase the Sleepy Hollow house, received the series of threatening telephone calls from Scientology attorney Lawrence Heller which necessitated his becoming active again in his legal and extralegal defense (see History at 13:15-27, supra). At the time Armstrong and Walton moved into the house in May, 1990 Walton had agreed to represent Armstrong in the pending appeal from the Breckenridge decision. Armstrong then had a plan of living life in Sleepy Hollow, running, riding, writing, drawing and other things, such as picking up the world's trash, solving the economy issue, or zeroing in on the Unified Field. The August 2 invasion of Kuwait by Iraq and the immediate international crisis that followed, televised 24 hours a day in power and detail, greatly affected Armstrong. He admits that as the "world" and Scientology view life, he had already been greatly affected in everything by God, in whom he believed, with whom he communicated, and to whom he prayed and looked for guidance and the courage to do what he believed God called him to do. After being so guided by God, Armstrong merely transferred to Walton, who was already on title in the Sleepy Hollow house, his interest therein. Armstrong denies that he transferred at least $35,000 in cash to Walton. Armstrong had, at the time of his and Walton's purchase of the property, deposited an amount of cash into a joint checking account intended to cover house expenses and needs for one year. When Armstrong transferred his interest in the house to Walton, Walton assumed the house's loan payments, and all other expenses and needs thereafter. Armstrong, by leaving the approximately $35,000 in the joint bank account, was attempting to respect his agreement and arrangement with Walton, perform what he saw as a contract, and to ensure Walton had the wherewithal, no matter what happened to Armstrong, to survive in the house and embark on his career. Armstrong admits that in August, 1990 he forgave all debts owed to him by friends and family members, and gave away the remainder of his cash, some $1500.00. That cash was repaid to Armstrong in many ways since then. Armstrong denies that he asserted under oath that he received no valuable consideration for these transfers. Armstrong has asserted under oath, and now reasserts, that he received the treasures of God, beyond human wealth and understanding, for his small willingness to give away things which have no value. Armstrong denies that he has not produced any records of any of these transactions, other than the transfer of the real property to Walton. Armstrong produced to Scientology in the State Action each and every document, totalling hundreds of pages, reflecting or concerning in any way each and every one of these transactions.

11. Armstrong called his company The Gerald Armstrong Corporation, or "TGAC," or "Teegeeack."

12. Armstrong admits the averments of this paragraph, except he denies that The Gerald Armstrong Corporation, or TGAC or Teegeeack was ever known as GAC. Armstrong admits that The Gerald Armstrong Corporation had at one time considerable worldly value.

13. Armstrong admits that The Gerald Armstrong Corporation possessed a number of Gerald Armstrong's artistic and literary works, possessed rights to a number of his inventions and formulas, and was in the business of bringing peace and exploiting its assets for commercial and peaceful purposes. Armstrong admits that the business of TGAC was at one time to, inter alia, care for, promote and exploit the works of Gerald Armstrong, but denies that it now has any significant business of any kind, except to attempt to wrap up its affairs in a peaceful manner.

14. Armstrong admits that in August, 1990 he divided his 100% ownership of TGAC into four equal shares and gave these shares to Michael Walton, Michael Douglas, Lorien Phippeny and Nancy Rodes, and that these people paid him nothing for their shares.

15. Armstrong denies that shortly after making the August, 1990 transfers he initiated successive, or any, breaches of Scientology's "contract." The earliest "breach" Scientology

alleges in its State Court action is in July, 1991. In February, 1990, Armstrong had already publicly exposed Scientology's post settlement "fair game" and Scientology's use of the "contract" to obstruct justice, and had opposed Scientology's efforts to enforce the "contract," in Scientology's appeal from the Breckenridge decision.

16. Armstrong admits that he reacquired the stock which he had distributed to Walton, Douglas, Phippeny and Rodes. Armstrong admits that Andrew Armstrong, Anthony Armstrong, Thomas McPherson, Michael Dick, Trevor and Colin Dick and Michael Walton own shares in TGAC.

17. Armstrong admits that he is Teegeeack's president, sole director, and only employee. Teegeeack has been suspended and its business and activities are negligible. It does have a single bank account and Gerald Armstrong is the sole signatory thereon.

18. Armstrong lacks the information necessary to know if he testified under oath in March, 1993 that he estimated the value of the assets of TGAC to be $1,000,000,000 to $1,500,000,000.

19. Armstrong admits that he testified at the meeting of creditors in May, 1995 that The Gerald Armstrong Corporation has no present commercial value.

Armstrong incorporated TGAC in 1987 and activated it in 1988 to be a vehicle for his work in the world. Armstrong is a writer and artist with a number of unique ideas and talents. He believed that TGAC was a funny, loving and potentially commercially profitable idea, and he developed artistic and socially redeeming concepts with this belief in mind. While doing so, he continued to be aware of Scientology's ongoing hatred of him and its "fair game" toward him and others; yet while continuing to be aware of said hatred and "fair game," he hoped that peace could prevail, and he did whatever he could to make and keep peace.

In late 1989, as described above, Scientology brought Armstrong back into its conflict. Much of Armstrong's attention and time thereafter was taken up in dealing with Scientology's threat and the legal actions necessary to defend himself and others in an arena in which he had no formal training, and in which his former attorney had been contracted away from defending or assisting him by Scientology as part of its "fair game" campaign. Nevertheless, Armstrong continued to be hopeful about his and TGAC's future, continued to believe that TGAC had stupendous potential, and did not think, believe or realize that Scientology was stupid enough to seek to judicially enforce its evil "contract." In this, Armstrong admits that it can be argued that he was naive about and underestimated both Scientology's vindictiveness, and the ease with which our courts allow themselves to be used, as Hubbard mandated, to harass.

Even after Armstrong renounced his worldly things in August, 1990, he continued to believe TGAC had great potential, and could be great fun and commercially profitable for his four friends to whom he had given the company. When Armstrong woke up to the level of Scientology's vindictiveness toward him and the level of danger he and anyone connected to him was in, and after three of the owners of the majority of TGAC's stock expressed their fear of "fair game," Armstrong agreed with the four owners to accept back their majority ownership, and to be responsible for the corporation and whatever was to become of it. Armstrong was then working full time with attorney Ford Greene, under concentrated attack from Scientology, and threatened in every part of his life.

In early 1994, after becoming aware of Scientology's increasing and unending overt and covert attacks on his character and reputation, Armstrong accepted that he was completely unable to live a normal or safe life or develop any of his artistic or intellectual ideas. Armstrong saw that if he did develop any such ideas Scientology would do whatever was necessary to destroy or pervert the ideas and threaten or harm anyone with whom Armstrong became involved in the development of his ideas. Scientology has libeled Armstrong internationally, claiming in mailings to countless people in the media, government and artistic circles that he, inter alia, lived a degraded lifestyle, testified falsely, was a heavy drug pusher, is connected to kidnappers, is incompetent, is psychotic and delusory, posed nude in a newspaper, and has AIDS.

Armstrong also accepted that Scientology wants him killed and that his life has no worldly future and is in grave danger. In 1984 Scientology's head private investigator Eugene M. Ingram, who works directly with David Miscavige, threatened to put a bullet between Armstrong's eyes. Ingram was at that time involved in corrupting a Los Angeles Police Officer to give Ingram a phony authorization to wiretap and secretly videotape Armstrong, Flynn and other people. Armstrong believes that Ingram participated in Scientology's effort in 1985 to have Armstrong charged criminally by the FBI based on their false statements. In 1986 Ingram participated in an effort to have Armstrong jailed on false charges. Ingram and Miscavige are connected to known criminals, including criminals in prison, and Armstrong believes that it is very possible that Ingram and Miscavige would arrange to have him killed or harmed if they ever got him incarcerated. In 1987 Miscavige had Scientology agents spread the false rumor in Europe that Armstrong is "an admitted agent provocateur of the US government." Armstrong believes that Miscavige's intention behind the fabrication and dissemination of that lie was to facilitate and provide plausible deniability for Armstrong's assassination by "anti-US agents." Armstrong believes that Ingram's concocting and spreading the false rumor that Armstrong has AIDS was very possibly in advance of a covert intelligence operation to somehow infect Armstrong with the AIDS virus. Miscavige and Scientology, using attorney Bartilson, attempted, with repeated motions and pressure, from the end of 1992 through July of 1994 to have Armstrong jailed for contempt of court based on their perjury and perversion of the truth. Armstrong believes that Miscavige and his Scientologist and non-Scientologist agents are desperate and that their desperation is increasing. Armstrong believes that because of the bizarre and cruel lengths Miscavige and his agents have gone to and continue to go to destroy Armstrong, they see him as a tremendous risk to their illusion of power, and are driven ever more madly to destroy him.

Armstrong has been given a fun way to clean the world of all its trash. He has the way to peacefully end the world's economic slavery and sadness. He has been given the formula for the Unified Field. He believes he has been given the mathematical proof of God's Guidance. These things have untold potential and hope for mankind. Yet Scientology is doing whatever it can to destroy that potential and deny those hopes for Armstrong and mankind.

Scientology has spread the black propaganda in the artistic arena that Armstrong has no connection to art or artists. Scientology denigrates every word Armstrong has ever written. In its publications sent to media everywhere, it calls him incompetent. It has done whatever it could to destroy his reputation. Now that it has done so, and destroyed the potential value and market for his ideas, it claims he is stating falsely that TGAC has no present commercial value. The Gerald Armstrong Corporation depends completely on Armstrong's good name and good will. Scientology has done whatever it could to destroy that good name and good will. Scientology has spent millions of dollars to attack Armstrong's person, ridicule his ideas and ruin his career. Now they spend more to attack him for daring to be beaten by them to a pulp. Now they lament that what they destroyed was worth so many billions of dollars.

Armstrong has the formula for the Unified Field, something sought by scientists and thinkers for decades. Scientology spreads the calumny that Armstrong is psychotic and delusory. Armstrong sees that no one in his right mind would believe that a psychotic and delusory person could divine the formula for the Unified Field. Armstrong recognizes that Scientology's attacks and cruelty and years of "fair game" threat have had a deep affect on his mind, and he acknowledges that he is not a rocket scientist. Armstrong believes that if he were to announce and develop his formula, Scientology would destroy his work. Miscavige is jealous of Armstrong's free mind and ideas. Miscavige's jealousy is reflected by his cruel attacks, his squandering of millions of dollars of Scientology funds, and consuming countless hours of Scientologists' time in the waste of destroying Armstrong. Armstrong believes that he must resolve the Scientology conflict, and that he is called by God to resolve this conflict, before he can safely develop his ideas.

Scientology is itself responsible, by its stalking of Armstrong, its black propaganda and its physical threats, for destroying Teegeeack's potential and commercial value.

FIRST CLAIM FOR RELIEF

(Dischargeability of Armstrong's Debts
Pursuant to 11 U.S.C. Section 727(a)(4)(A))

20. Armstrong incorporates by reference his statements above as though fully set forth herein.

21. Armstrong admits the averments of this paragraph.

22. Armstrong denies that TGAC was at all times operated by and for the benefit of Gerald Armstrong as his alter ego. Armstrong operated TGAC for the benefit of its shareholders and everyone else on earth.

23. Armstrong denies that any failure to include his ownership of Teegeeack on Schedule B was a deliberate omission of a material matter constituting a false oath or account in connection with the case. Armstrong believes that his oversight was a gift from God, which Armstrong was unaware of at the time, to bring him to this point, to cause Scientology to leap at another opportunity to attack and persecute him for God's purpose, and to cause him to write these words to facilitate the resolution of the Scientology conflict.

24. Armstrong denies that he failed to disclose his ownership of TGAC, and denies that at any time he intended to

mislead anyone as to his true financial condition or with any disregard whatsoever for the truth.

SECOND CLAIM FOR RELIEF

(Dischargeability of Armstrong's Debts
Pursuant to 11 U.S.C. Section 727(a)(5))

25. Armstrong incorporates by reference his statements above as though fully set forth herein.

26. Armstrong admits the averments of this paragraph.

27. Armstrong denies that three large payments total $15,000. Armstrong asserts that wherever any small payments came from in 1993 totalling $15,000 is irrelevant and Scientology has no right to that information.

28. Armstrong admits that he testified that TGAC has no commercial value.

29. Armstrong denies that he has provided no satisfactory explanation for anything, including why Scientology destroys and destroyed Armstrong's life, career, reputation, friendships, good will and great ideas.

THIRD CLAIM FOR RELIEF

(Dischargeability of Armstrong's Debts
Pursuant to 11 U.S.C. Section 523(a)(2))

30. Armstrong incorporates by reference his statements above as though fully set forth herein.

31. Armstrong denies that Scientology entered into the "contract" with Armstrong in good faith, and denies that it performed its part in full.

32. Armstrong denies that he falsely represented to Scientology that he understood every provision of the "contract." Armstrong asserts that Scientology knew through Flynn that

Armstrong knew that the "contract" was not worth the paper it's printed on, unenforceable and illegal.

33. Armstrong denies that he ever said anything about not abiding by the "contract" if it was inconvenient to him.

34. Armstrong denies that he put on a happy face at the videotaped "contract" signing in order to persuade Scientology to enter into the "contract" and pay him. Armstrong would have been very happy to not sign. Armstrong signed because Scientology promised to stop its "fair game" against him and everyone else if he did so.

35. Armstrong denies that CSI relied on anything but its "fair game" doctrine, including the intimidation and compromise of Armstrong's attorney, in order to concoct and present to Armstrong its "contract."

36. Armstrong denies that Scientology would not have paid Armstrong $800,000 if it had known that Armstrong did not intend to abide by the nondisclosure provisions of the "contract." Scientology did not know what it was paying Armstrong; it could have been anywhere between $0 and everything Scientology paid to Flynn.

37. Armstrong denies that his conduct at the time of signing Scientology's "contract" constituted false pretenses and/or false representations which Armstrong knew to be false and/or which he made with reckless disregard as to their truth or falsity. Armstrong signed to give Scientology peace and freedom which it rejected and chose instead war.

FOURTH CLAIM FOR RELIEF

(Dischargeability of Armstrong's Debts
Pursuant to 11 U.S.C. Section 523(a)(6))

38. Armstrong incorporates by reference his statements above as though fully set forth herein.

39. Armstrong denies that he ever hid any assets of any kind. He denies that he ever set out on a course of conduct intended deliberately to damage and harass Scientology or anyone. Scientology is not damaged by anything Armstrong has done. Scientology precipitated and caused Armstrong's responses by its own "fair game" acts toward him, and by engaging him in post-settlement controversy and conflict. Armstrong has done nothing with the intent and purpose of impeding, injuring and destroying Scientology or its "faith." Armstrong has sought to bring about a peaceful resolution of Scientology's "fair game" toward him. Scientology has rejected each offer of peace and every attempt to resolve the conflict.

40. Armstrong denies that any of his actions are deliberate and malicious. Armstrong denies that he ever asked any funds of anyone to keep silent. Armstrong denies that he has an anti-Scientology campaign. Armstrong has attempted to defend himself in Scientology's anti-Armstrong campaign.

FIRST AFFIRMATIVE DEFENSE

(Failure To State A Cause Of Action)

41. Further answering said complaint, and as a first, separate and affirmative defense thereto, defendant Armstrong realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

The complaint and each cause of action contained therein fails to state a cause of action against defendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(This Court Cannot Enjoin The Practice Of A Profession)

42. Further answering said complaint, and as a second, separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Any attempt by plaintiff to limit the ability to obtain gainful employment by defendant is void and unenforceable as a matter of public policy, and constitutes an unenforceable restraint on the right of defendant to pursue his chosen profession, inasmuch as plaintiff seeks to have adjudged legal and enforced a "contract" which does not permit defendant to work as a paralegal for Ford Greene, and defendant is employed as a paralegal for Ford Greene. Plaintiff, moreover, seeks to prevent defendant from pursuing his profession of prophesy, and defendant is actively engaged in such profession.

THIRD AFFIRMATIVE DEFENSE

(Unclean Hands)

43. Further answering said complaint, and as a third, separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant and/or obtaining the equitable relief under the doctrine of unclean hands, because plaintiff: has subjected defendant to plaintiff's "fair game" policy; has subjected defendant's attorney to "fair game" and forced him to sign an illegal contract which prevents him from defending defendant or assisting defendant against plaintiff's attacks; has itself breached the "settlement contract" which it seeks to enforce against defendant; has employed the "settlement contract" to suppress evidence of its criminal and civil wrongdoing in order to avoid liability to defendant and to other individuals and entities which it has harmed, and/or over which it has taken unfair advantage; and has in a manner not allowed by law used the Courts against defendant to achieve ends not allowed by law.

FOURTH AFFIRMATIVE DEFENSE

(In Pari Delicto)

44. Further answering said complaint, and as a fourth, separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Notwithstanding the things alleged of defendant in the complaint, which are denied in the applicable paragraphs herein, plaintiffs' and its counsels' conduct in connection with the events giving rise to this action bars plaintiff from recovery with regard to the complaint under the doctrine of in pari delicto. Plaintiff is at least equally at fault and at least equally responsible for the things alleged of defendant.

FIFTH AFFIRMATIVE DEFENSE

(Illegality)

45. Further answering said complaint, and as a fifth, separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action as a result of its acts of illegality in connection with matters that give rise to this case. Particularly plaintiff and other Scientology-related entities engaged in a wholesale attempt to obstruct justice, suppress evidence in order to deny redress, due process, and equal protection of the law to its civil and criminal victims by means of obtaining settlements of litigation in actions in various state and federal courts across the United States. In each of those actions attorney Michael J. Flynn was attorney of record, or coordinating counsel for litigants adverse to Scientology. In each of those actions litigants adverse to Scientology were coerced into signing "secret settlement contracts" the terms of which were substantially similar to those set forth in the "settlement contract" at issue herein.

Plaintiff is further barred from bringing this action because as a material part of entering the "settlement contract" with defendant, plaintiff required defendant's counsel, Michael Flynn, to sign secret side agreements for indemnification for resolution of the retrial of the original Armstrong litigation were plaintiff and other Scientology-related entities successful in obtaining reversal of Judge Breckenridge's decision on appeal. In such agreement Scientology promised to limit its collections of damages to $25,001.00 and to indemnify Flynn for the payment thereof and Flynn, in turn, would indemnify Armstrong for any such judgment. The existence of these secret, side agreements were never disclosed to Armstrong by Flynn, plaintiff, or other Scientology-related entities.

Plaintiff is further barred from bringing this action because as a material part of entering said "settlement contracts," it or its agents required attorney Flynn to promise never to take any anti-Scientology cases in the future and to not defend or assist defendant in future attacks by Scientology.

Furthermore, other acts of illegality by plaintiff and other

Scientology-related entities have been publicly documented. Plaintiffs have engaged in acts of impropriety, as set forth above, and including what the US District Court for the Central District of California referred to in a written order, entered after most of the events in issue herein, as "outrageous litigation tactics." Also, in addition to the Flynn "settlement contracts" the conduct of plaintiff and other Scientology-related organizations, entities and individuals against persons "adverse to Scientology" including citizens, counsel, judges and government authorities (including but not limited to illegal surveillance, obtaining telephone company records, breaking and entering, threatening conduct, and violence) have discouraged and intimidated knowledgeable persons from disclosing their knowledge about, or otherwise coming forward against, the illegal activities of plaintiff and other Scientology-related organizations, entities and individuals, and from assisting victims thereof to obtain redress, due process and equal protection of the law.

SIXTH AFFIRMATIVE DEFENSE

(Fraud and Deceit)

46. Further answering said complaint, and as a sixth, separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant because of its fraud and deceit in representing to defendant that its management had changed and no longer would engage in antisocial and illegal activities ("fair game,") that it wanted to buy peace, that it would leave defendant, and everyone else alone, and that the false affidavit that it required defendant to sign as a condition of the settlement would be disclosed only if defendant attacked Scientology. Plaintiff made the foregoing representations to defendant with knowledge of the falsity thereof at the time said representations were made and with the intent to deceive defendant, who actually and justifiably relied on those material misrepresentations to his injury by signing the "settlement contract." In fact, Scientology never intended to cease its illegal and immoral activities, never intended to buy peace with defendant, never intended to leave defendant or any other perceived "enemy" alone, never intended not to use the false declaration only if defendant attacked Scientology, and never intended to abide by the terms of the "settlement contract." Rather plaintiff and other Scientology-related entities intended to use the "settlement contract" as a tool for the implementation of their "fair game" policy and Scientology's litigation tactics so as to engineer a reversal of Judge Breckenridge's decision, to collusively resolve any re-trial of the original Armstrong case, to obtain possession of the so-called MCCS tapes which were evidence of Scientology employing attorneys for the purpose of committing future crimes and frauds, to use the false declaration in other litigation without regard to defendant's conduct, and to otherwise obstruct justice and suppress evidence of facts which discredited plaintiff and other Scientology-related entities.

Scientology's litigation strategy is as follows:

> "The law can be used very easily to harass, and enough harassment on somebody who is simply on the thin edge anyway, well knowing that he is not authorized, will

generally be sufficient to cause his professional decease. If possible, of course, ruin him utterly."

From the outset, prior to the execution of the "settlement contract" with defendant, and the execution of all other Flynn "settlement contracts," it was the intent of plaintiff and other Scientology-related organizations, entities and individuals to continue to wage war on and harass defendant, to continue to engage in illegal activities and conduct, and to suppress evidence and obstruct justice by means of said agreements, and to use said agreements as a tool of "fair game" and the litigation strategy of ruin in order to ensure that information regarding Scientology's crimes and civil misconduct would stay suppressed, and its criminal and civil victims would be denied legal redress and justice.

Moreover, Flynn advised defendant that he would always be available in the future to represent defendant if defendant had to litigate with Scientology in the future. Said statement was false and misleading because Flynn had signed an agreement with Scientology promising not to represent anyone including defendant in litigation involving Scientology in the future, and specifically to not assist defendant in any way in any such litigation. Armstrong relied on the truth of Flynn's statement in signing the "settlement contract."

SEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

47. Further answering said complaint, and as a seventh separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is equitably estopped from asserting each and all of the purported causes of action in the complaint by reason of its own acts, omissions, and conduct, or that of its agents, including, but not limited to the fact that it violated the "settlement contract" in that it or its agents provided information from the original Armstrong case that was the subject of the "settlement contract" to various persons and in various litigation including but not limited to The London Sunday Times, The Los Angeles Times, the instant litigation, the Corydon litigation, and in Church of Scientology of California v. Russell Miller and Penguin Books Limited in the High Court of Justice, Case No. 6140 in London, England, where a Scientology-related entity filed multiple affidavits attacking defendant.

As yet a further basis for barring plaintiff on the ground of estoppel, defendant has requested the Scientology entities to release Flynn and defendant's other former attorneys from the agreements they signed never to represent Armstrong again, and plaintiff and all other Scientology entities have refused to do so.

EIGHTH AFFIRMATIVE DEFENSE

(Waiver)

48. Further answering said complaint, and as an eighth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant, by reason of its own acts, omissions and conduct, or that of its agents. Following the December, 1986 signing of the "settlement contract," Scientology continued to attack Armstrong, published its own, and false, versions of his history, and engaged him in controversy concerning his experiences and knowledge of Scientology.

NINTH AFFIRMATIVE DEFENSE

(Mistake Of Law)

49. Further answering said complaint, and as a ninth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant, because defendant's former attorney, Michael Flynn, advised said defendant that the provisions of the "settlement contract" that plaintiff is seeking to enforce against defendant were not in any way enforceable. Defendant relied on such representations, but for which he would not have signed said "settlement contract."

TENTH AFFIRMATIVE DEFENSE

(Mistake Of Fact)

50. Further answering said complaint, and as a tenth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant, because defendant's former attorney, Michael Flynn, advised defendant that the provisions of the "settlement contract" that plaintiff is seeking to enforce were not in any way enforceable. Defendant relied on such representations, but for which he would not have signed said "settlement contract."

ELEVENTH AFFIRMATIVE DEFENSE

(Conflict of Interest)

51. Further answering said complaint, and as an eleventh separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant, because defendant's former attorney, Michael Flynn, in conjunction with settling defendant's case against Scientology-related entities, also settled 30 other cases, including cases of his own against Scientology-related defendants without procuring outside counsel for defendant. Scientology created the state of conflict of interest by subjecting Flynn to "fair game" and then requiring Flynn get his clients to sign illegal and immoral "settlement contracts" with Scientology to their detriment.

TWELFTH AFFIRMATIVE DEFENSE

(Duress and Undue Influence)

52. Further answering said complaint, and as a twelfth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant because Scientology had implemented "fair game" policy stratagems on defendant's attorney, Michael J. Flynn and upon other anti-Scientology litigants, and would continue such conduct against all such persons unless all said anti-Scientology litigants, including Flynn, signed "settlement contracts" substantially similar to that signed by defendant.

Further, in early December 1986, attorney Flynn and other anti-Scientology litigants, postured Armstrong as a deal breaker, by stating that their desires to settle would be ruined unless defendant Armstrong agreed to settle and led him to believe if he did not sign the agreement, they would not cooperate in such event by acting as Armstrong's witnesses and zealous advocate on the trial of his cross-complaint against Scientology set to commence shortly thereafter in the original Armstrong case.

THIRTEENTH AFFIRMATIVE DEFENSE

(Laches)

53. Further answering said complaint, and as a thirteenth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds of laches. Plaintiff, through its attorney Lawrence Heller, asserted from December, 1986 until March 27, 1990, that Scientology entities, pursuant to the "settlement contract," could not discuss defendant's experiences and knowledge. Scientology's delay in changing its position is unreasonable.

FOURTEENTH AFFIRMATIVE DEFENSE

(Impossibility)

54. Further answering said complaint, and as a fourteenth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds of impossibility.

FIFTEENTH AFFIRMATIVE DEFENSE

(Frustration of Contractual Purpose)

55. Further answering said complaint, and as a fifteenth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds of frustrating defendant's ability to perform the terms of the "settlement contract." Scientology's own actions following the "settlement" pursuant to its "fair game" doctrine has made defendant's obtaining of the "peace" and freedom from "fair game," which Scientology promised, impossible. Scientology's own actions in violation of the spirit and letter of the "settlement contract" have necessitated defendant's defense in the legal arena and in the public marketplace of ideas.

SIXTEENTH AFFIRMATIVE DEFENSE

(Unfair and Unreasonable Contract)

56. Further answering said complaint, and as a sixteenth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" is unreasonable and unfair as to defendant.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Lack of Mutuality)

57. Further answering said complaint, and as a seventeenth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract," as interpreted by plaintiff, lacks in reciprocity and mutuality.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Ambiguity)

58. Further answering said complaint, and as an eighteenth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" in ambiguous and incapable of enforcement.

NINETEENTH AFFIRMATIVE DEFENSE

(Lack of Adequate Consideration)

59. Further answering said complaint, and as a nineteenth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" is not supported by adequate consideration.

TWENTIETH AFFIRMATIVE DEFENSE

(Unconscionability)

60. Further answering said complaint, and as a twentieth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" is unconscionable.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Adhesion)

61. Further answering said complaint, and as a twenty-first separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" is a contract of adhesion. Defendant had no realistic choice as to the "settlement contract's" form.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Hardship)

62. Further answering said complaint, and as a twenty-second separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" would work an unfair hardship on defendant.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Offset)

63. Further answering said complaint, and as a twenty-third separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Any damages that plaintiff has suffered in consequence of the alleged conduct is exceeded by the damages suffered by defendant, in consequence of the misconduct of plaintiff, and plaintiff's agents' acts of "fair game," and therefore plaintiff should take nothing.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Liquidated Damages Act As Penalty)

64. Further answering said complaint, and as a twenty-fourth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendants on the grounds that the "settlement contract's" provision of liquidated damages is not an approximation of damage, but is intended to act and does act as a penalty.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(First Amendment - Religion)

65. Further answering said complaint, and as a twenty-fifth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" violates defendant's right to freedom of religion guaranteed by the state and federal constitutions.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(First Amendment - Speech)

66. Further answering said complaint, and as a twenty-sixth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" violates defendant's right to freedom of speech guaranteed by the state and federal constitutions.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(First Amendment - Press)

67. Further answering said complaint, and as a twenty-seventh separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" violates defendant's right to freedom of press guaranteed by the state and federal constitutions.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(First Amendment - Association)

68. Further answering said complaint, and as a twenty-eighth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" violates defendant's right to freedom of association guaranteed by the state and federal constitutions.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Privacy)

69. Further answering said complaint, and as a twenty-ninth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the "settlement contract" violates defendant's right of privacy guaranteed by the state and federal constitutions.

THIRTIETH AFFIRMATIVE DEFENSE

(Implied Covenant of Good Faith and Fair Dealing)

70. Further answering said complaint, and as a thirtieth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from bringing this action against defendant on the grounds that the conduct of plaintiff and its agents violates the implied covenant of good faith and fair dealing.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Justification - Defense of Another, Interests of Third Persons, and the Public)

71. Further answering said complaint, and as a thirty-first separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

At all relevant times, the acts of defendant were privileged and justified because they were done in the defense of others, the interests of third parties, the interests of justice, and the interests of the public.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Res Judicata)

72. Further answering said complaint, and as a thirty-second separate and affirmative defense thereto, defendant

realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff's complaint, and plaintiff's claims for equitable relief and for damages, are barred by the doctrine of res judicata.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Collateral Estoppel)

73. Further answering said complaint, and as a thirty-third separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff's complaint, and plaintiff's claims for equitable relief and for damages, are barred by the doctrine of collateral estoppel.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

74. Further answering said complaint, and as a thirty-fourth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff, and/or its agent, and/or its counsel, failed to take proper and reasonable steps to avoid or mitigate the damages alleged, and to the extent of such failure to mitigate or to avoid, damages allegedly incurred by plaintiff, if any, should be reduced accordingly.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Action Barred By Equity, California Civil Code and United States Code Provisions)

75. Further answering said complaint, and as a thirty-fifth

separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from judicial relief by the general principles of equity and the specific provisions of Part IV of the California Civil Code, including but not limited to §§ 3512, 3517, 3519, 3524, (without any admission of wrongdoing by defendant) and 3533; and Federal Code provisions.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

(Void As Against Public Policy)

76. Further answering said complaint, and as a thirty-sixth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from judicial relief because the "settlement contract" is void as against public policy.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

(The Settlement Contract Cannot Be Specifically Enforced)

77. Further answering said complaint, and as a thirty-seventh separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from judicial relief because the "settlement contract" cannot be specifically enforced.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

(The Settlement Contract Cannot Be Specifically Performed)

78. Further answering said complaint, and as a thirty-eighth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every

allegation contained above and alleges as follows:

Plaintiff is barred from judicial relief because the "settlement contract" cannot be specifically performed.

THIRTY-NINTH AFFIRMATIVE DEFENSE

(Due Process)

79. Further answering said complaint, and as a thirty-ninth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from judicial relief because the "settlement contract" deprives defendant, third parties and the public of due process of law as protected by the state constitution and by the Fifth and Fourteenth Amendments to the federal constitution.

FORTIETH AFFIRMATIVE DEFENSE

(Equal Protection)

80. Further answering said complaint, and as a fortieth separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from judicial relief because the "settlement contract" deprives defendant third parties and the public of equal protection of law as guaranteed by the state constitution and by the federal constitution.

FORTY-FIRST AFFIRMATIVE DEFENSE

(Right to Counsel)

81. Further answering said complaint, and as a forty-first separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation

contained above and alleges as follows:

Plaintiff is barred from judicial relief because the "settlement contract" deprives defendant of his right to counsel as protected by the state constitution and by the Sixth Amendment to the federal constitution.

FORTY-SECOND AFFIRMATIVE DEFENSE

(Public Domain)

82. Further answering said complaint, and as a forty-second separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from judicial relief because the information that defendant is accused of disclosing is in the public domain.

FORTY-THIRD AFFIRMATIVE DEFENSE

(Privilege)

83. Further answering said complaint, and as a forty-third separate and affirmative defense thereto, defendant realleges and incorporates by reference herein each and every allegation contained above and alleges as follows:

Plaintiff is barred from judicial relief because the acts that defendant is accused of having committed are privileged.

WHEREFORE, Defendant Armstrong prays for relief as follows:

1. That CSI takes nothing by its complaint;
2. That Armstrong recover his costs of suit herein;
3. That Armstrong recover his attorney's fees and costs of defending the suit herein;
4. That the Court award such further relief as it may deem proper.

Respectfully submitted,

DATED: September 22, 1995

GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 715 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

GERALD ARMSTRONG'S SECOND AMENDED ANSWER

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

ANDREW H. WILSON, ESQ.
ESQ.Wilson, Ryan & Campilongo
115 Sansome Street, 4th Floor
San Francisco, CA 94104

LAURIE J. BARTILSON, ESQ.
Moxon & Bartilson
6255 Sunset Boulevard
Suite 2000
Los Angeles, CA 90028

[x](By Mail)I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[x](State)I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: September 25, 1995

Lorien Abbey Phippeny

FILED
JUN 22 1984
John J. Corcoran,
Rosie M. Hart
BY ROSIE M. HART, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA, Plaintiff, vs. GERALD ARMSTRONG, Defendant.	No. C 420153 MEMORANDUM OF INTENDED DECISION
MARY SUE HUBBARD, Intervenor.	

In this matter heretofore taken under submission, the Court announces its intended decision as follows:

As to the tort causes of action, plaintiff, and plaintiff in intervention are to take nothing, and defendant is entitled to Judgment and costs.

As to the equitable actions, the court finds that neither plaintiff has clean hands, and that at least as of this time, are not entitled to the immediate return of any document or objects presently retained by the court clerk. All exhibits

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EXHIBIT H 3

received in evidence or marked for identification, unless specifically ordered sealed[1], are matters of public record and shall be available for public inspection or use to the same extent that any such exhibit would be available in any other lawsuit. In other words they are to be treated henceforth no differently than similar exhibits in other cases in Superior Court. Furthermore, the "inventory list and description," of materials turned over by Armstrong's attorneys to the court, shall not be considered or deemed to be confidential, private, or under seal.

All other documents or objects presently in the possession of the clerk (not marked herein as court exhibits) shall be retained by the clerk, subject to the same orders as are presently in effect as to sealing and inspection, until such time as trial court proceedings are concluded as to the severed cross complaint. For the purposes of this Judgment, conclusion will occur when any motion for a new trial has been denied, or the time within such a motion must be brought has expired without such a motion being made. At that time, all documents neither received in evidence, nor marked for identification only, shall be released by the clerk to plaintiff's representatives. Notwithstanding this order, the parties may at any time by written stipulation filed with the clerk obtain release of any or all such unused materials.

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[1] Exhibits in evidence No. 500-40; JJJ; KKK; LLL: MMM; NNN; OOO; PPP; QQQ; RRR; and 500-QQQQ.

Exhibits for identification only No. JJJJ; Series 500-DDDD, EEEE, FFFF, GGGG, HHHH, IIII, NNNN-1, OOOO, ZZZZ, CCCCC, GGGGG, IIIII, KKKKK, LLLLL, OOOOO, PPPPP, QQQQQ, BBBBBB, OOOOOO, BBBBBBB.

Defendant and his counsel are free to speak or communicate upon any of Defendant Armstrong's recollections of his life as a Scientologist or the contents of any exhibit received in evidence or marked for identification and not specifically ordered sealed. As to all documents, and other materials held under seal by the clerk, counsel and the defendant shall remain subject to the same injunctions as presently exist, at least until the conclusion of the proceedings on the cross complaint. However, in any other legal proceedings in which defense counsel, or any of them, is of record, such counsel shall have the right to discuss exhibits under seal, or their contents, if such is reasonably necessary and incidental to the proper representation of his or her client.

Further, if any court of competent jurisdiction orders defendant or his attorney to testify concerning the fact of any such exhibit, document, object, or its contents, such testimony shall be given, and no violation of this order will occur. Likewise, defendant and his counsel may discuss the contents of any documents under seal or of any matters as to which this court has found to be privileged as between the parties hereto, with any duly constituted Governmental Law Enforcement Agency or submit any exhibits or declarations thereto concerning such document or materials, without violating any order of this court.

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This court will retain jurisdiction to enforce, modify, alter, or terminate any injunction included within the Judgment.

Counsel for defendant is ordered to prepare, serve, and file a Judgment on the Complaint and Complaint in Intervention, and Statement of Decision if timely and properly requested, consistent with the court's intended decision.

Discussion

The court has found the facts essentially as set forth in defendant's trial brief, which as modified, is attached as an appendix to this memorandum. In addition the court finds that while working for L.R. Hubbard (hereinafter referred to as LRH), the defendant also had an informal employer-employee relationship with plaintiff Church, but had permission and authority from plaintiffs and LRH to provide Omar Garrison with every document or object that was made available to Mr. Garrison, and further, had permission from Omar Garrison to take and deliver to his attorneys the documents and materials which were subsequently delivered to them and thenceforth into the custody of the County Clerk.

Plaintiff Church has made out a prima facie case of conversion (as bailee of the materials), breach of fiduciary duty, and breach of confidence (as the former employer who provided confidential materials to its then employee for certain specific purposes, which the employee later used for other purposes to plaintiff's detriment). Plaintiff Mary Jane Hubbard has likewise made out a prima facie case of conversion and invasion of privacy (misuse by a person of private matters entrusted to him for certain specific purposes only).

While defendant has asserted various theories of defense, the basic thrust of his testimony is that he did what he did, because he believed that his life, physical and mental well being, as well as that of his wife were threatened because the organization was aware of what he knew about the life of LRH, the secret machinations and financial activities of the Church, and his dedication to the truth. He believed that the only way he could defend himself, physically as well as from harassing lawsuits, was to take from Omar Garrison those materials which would support and corroborate everything that he had been saying within the Church about LRH and the Church, or refute the allegations made against him in the April 22 Suppressive Person Declare. He believed that the only way he could be sure that the documents would remain secure for his future use was to send them to his attorneys, and that to protect himself, he had to go public so as to minimize the risk that LRH, the Church, or any of their agents would do him physical harm.

This conduct if reasonably believed in by defendant and engaged in by him in good faith, finds support as a defense to the plaintiff's charges in the Restatements of Agency, Torts, and case law.

Restatement of Agency, Second, provides:

> "Section 395f: An agent is privileged to reveal information confidentially acquired by him in the course of his agency in the protection of a superior interest of himself or a third person.

> "Section 418: An agent is privileged to protect interests of his own which are superior to those of the principal, even though he does so at the expense of the principal's interest or in disobedience to his orders."

Restatement of torts, Second, section 271:

> "One is privileged to commit an act which would otherwise be a trespass to or a conversion of a chattel in the possession of another, for the purpose of defending himself or a third person against the other, under the same conditions which would afford a privilege to inflict harmful or offensive contact upon the other for the same purpose."

The Restatement of Torts, Second, section 652a, as well as case law, make it clear that not all invasions of privacy are unlawful or tortious. It is only when the invasion is unreasonable that it becomes actionable. Hence, the trier of fact must engage in a balancing test, weighing the nature and extent of the invasion, as against the purported justification therefore to determine whether in a given case, the particular invasion or intrusion was unreasonable.

In addition the defendant has asserted as a defense the principal involved in the case of Willig v. Gold, 75 Cal.App.2d, 809, 814, which holds that an agent has a right or privilege to disclose his principal's dishonest acts to the party prejudicially affected by them.

Plaintiff Church has asserted and obviously has certain rights arising out of the First Amendment. Thus, the court cannot, and has not, inquired into or attempted to evaluate the merits, accuracy, or truthfulness of Scientology or any of its precepts as a religion. First Amendment rights, however, cannot be utilized by the Church or its members, as a sword to preclude the defendant, whom the Church is suing, from defending himself. Therefore, the actual practices of the Church or its members, as it relates to the reasonableness of the defendant's conduct and his state of mind are relevant, admissible, and have been considered by the court.

As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Howard Schomer to be credible, extremely persuasive, and the defense of privilege or justification established and corroborated by this evidence. Obviously, there are some discrepancies or variations in recollections, but these are the normal problems which arise from lapse of time, or from different people viewing matters or events from different perspectives. In all critical and important matters, their testimony was precise, accurate, and rang true. The picture painted by these former dedicated Scientologists, all of whom were intimately involved with LRH, or Mary Jane Hubbard, or of the Scientology Organization, is on the one hand pathetic, and on the other, outrageous. Each of these persons literally gave years of his or her respective life in support of a man, LRH, and his ideas. Each has manifested a waste and loss or frustration which is incapable of description. Each has broken with the movement for a variety of reasons, but at the same time, each is, still bound by the knowledge that the Church has in its possession his or her most inner thoughts and confessions, all recorded in "pre-clear (P.C.) folders" or other security files of the organization, and that the Church or its minions is fully capable of intimidation or other physical or psychological abuse if it suits their ends. The record is replete with evidence of such abuse.

In 1970 a police agency of the French Government conducted an investigation into Scientology and concluded, "this sect, under the pretext of 'freeing humans' is nothing in reality but a vast enterprise to extract the maximum amount of money from its adepts by (use of) pseudo-scientific theories, by (use of) 'auditions' and 'stage settings' (lit. to create a theatrical scene') pushed to extremes (a machine to detect lies, its own particular phraseology . . .), to estrange adepts from their families and to exercise a kind of blackmail against persons who do not wish to continue with this sect."[2] From the evidence presented to this court in 1984, at the very least, similar conclusions can be drawn. In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization clearly is schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile. At the same time it appears that he is charismatic and highly capable of motivating, organizing, controlling, manipulating, and inspiring his adherents. He has been referred to during the trial as a "genius," a "revered person," a man who was "viewed by his followers in awe." Obviously, he is and has been a very complex person, and that complexity is further reflected in his alter ego, the Church of Scientology. Notwithstanding protestations to the contrary, this court is satisfied that LRH runs the Church in all ways through the Sea Organization, his role of Commodore, and the Commodore's Messengers.[3] He has, of course, chosen to go into "seclusion," but he maintains contact and control through the top messengers. Seclusion has its light and dark side too. It adds to his mystique, and yet shields him from accountability and subpoena or service of summons.

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[2] Exhibit 500-HHHHH.

LRH's wife, Mary Sue Hubbard is also a plaintiff herein. On the one hand she certainly appeared to be a pathetic individual. She was forced from her post as Controller, convicted and imprisoned as a felon, and deserted by her husband. On the other hand her credibility leaves much to be desired. She struck the familiar pose of not seeing, hearing, or knowing any evil. Yet she was the head of the Guardian Office for years and among other things, authored the infamous order "GO 121669"[4] which directed culling of supposedly confidential P.C. files/folders for purposes of internal security. In her testimony she expressed the feeling that defendant by delivering the documents, writings, letters to his attorneys, subjected her to mental rape. The evidence is clear and the court finds that defendant and Omar Garrison had permission to utilize these documents for the purpose of Garrison's proposed biography. The only other persons who were shown any of the documents were defendant's attorneys, the Douglasses, the Dincalcis, and apparently some documents specifically affecting LRH's son "Nibs," were shown to "Nibs." The Douglasses and Dincalcises were disaffected Scientologists who had a concern for their own safety and mental security, and were much in the same situation as defendant. They had not been declared as suppressive, but Scientology had their P.C. folders, as well as other confessions, and they were extremely apprehensive. They did not see very many of the documents, and it is not entirely clear which they saw. At any rate Mary Sue Hubbard did not appear to be so much distressed by this fact, as by the fact that Armstrong had given the documents to Michael Flynn, whom the Church considered its foremost lawyer-enemy.[5] However, just as the plaintiffs have First Amendment rights, the defendant has a Constitutional right to an attorney of his own choosing. In legal contemplation the fact that defendant selected Mr. Flynn rather than some other lawyer cannot by itself be tortious. In determining whether the defendant unreasonably invaded Mrs. Hubbard's privacy, the court is satisfied the invasion was slight, and the reasons and justification for defendant's conduct manifest. Defendant was told by Scientology to get an attorney. He was declared an enemy by the Church. He believed, reasonably, that he was subject to "fair game." The only way he could defend himself, his integrity, and his wife was to take that which was available to him and place it in a safe harbor, to wit, his lawyer's custody. He may have engaged in overkill, in the sense that he took voluminous materials, some of which appear only marginally relevant to his defense. But he was not a lawyer and cannot be held to that precise standard of judgment. Further, at the time that he was accumulating the material, he was terrified and undergoing severe emotional turmoil. The court is satisfied that he did not unreasonably intrude upon Mrs. Hubbard's privacy under the circumstances by in effect simply making his knowledge that of his attorneys. It is, of course, rather ironic that the person who authorized G.O. order 121669 should complain about an invasion of privacy. The practice of culling supposedly confidental "P.C. folders or files" to obtain information for purposes of intimidation and/or harassment is repugnant and outrageous. The Guardian's Office, which plaintiff headed, was no respector of anyone's civil rights, particularly that of privacy. Plaintiff Mary Sue Hubbard's cause of action for conversion must fail for the same reason as plaintiff Church. The documents were all together in Omar Garrison's possession. There was no rational way the defendant could make any distinction.

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[3] See Exhibit K: Flag Order 3729 - 15 September 1978 "Commodore's Messengers."

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[4] Exhibit AAA.

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[5] "No, I think my emotional distress and upset is the fact that someone took papers and materials without my authorization and then gave them to your Mr. Flynn." Reporter's Transcript, p. 1006.

Insofar as the return of documents is concerned, matters which are still under seal may have evidentiary value in the trial of the cross complaint or in other third party litigation. By the time that proceedings on the cross complaint are concluded, the court's present feeling is that those documents or objects not used by that time should be returned to plaintiff. However, the court will reserve jurisdiction to reconsider that should circumstances warrant.

Dated: June 20, 1984

Paul G. Breckenridge Jr.

PAUL G. BRECKENRIDGE, JR.
Judge of the Superior Court

Appendix

Defendant Armstrong was involved with Scientology from 1969 through 1981, a period spanning 12 years. During that time he was a dedicated and devoted member who revered the founder, L. Ron Hubbard. There was little that Defendant Armstrong would not do for Hubbard or the Organization. He gave up formal education, one-third of his life, money and anything he could give in order to further the goals of Scientology, goals he believed were based upon the truth, honesty, integrity of Hubbard and the Organization.

From 1971 through 1981, Defendant Armstrong was a member of the Sea Organization, a group of highly trained scientologists who were considered the upper echelon of the Scientology organization. During those years he was placed in various locations, but it was never made clear to him exactly which Scientology corporation he was working for. Defendant Armstrong understood that, ultimately, he was working for L. Ron Hubbard, who controlled all Scientology finances, personnel, and operations while Defendant was in the Sea Organization.

Beginning in 1979 Defendant Armstrong resided at Gilman Hot Springs, California, in Hubbard's "Household Unit." The Household Unit took care of the personal wishes and needs of Hubbard at many levels. Defendant Armstrong acted as the L. Ron Hubbard Renovations In-Charge and was responsible for renovations, decoration, and maintenance of Hubbard's home and office at Gilman Hot Springs.

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In January of 1980 there was an announcement of a possible raid to be made by the FBI or other law enforcement agencies of the property. Everyone on the property was required by Hubbard's representatives, the Commodore's Messengers, to go through all documents located on the property and "vet" or destroy anything which showed that Hubbard controlled Scientology organizations, retained financial control, or was issuing orders to people at Gilman Hot Springs.

A commercial paper shredder was rented and operated day and night for two weeks to destroy hundreds of thousands of pages of documents.

During the period of shredding, Brenda Black, the individual responsible for storage of Hubbard's personal belongings at Gilman Hot Springs, came to Defendant Armstrong with a box of documents and asked whether they were to be shredded. Defendant Armstrong reviewed the documents and found that they consisted of a wide variety of documents including Hubbard's personal papers, diaries, and other writings from a time before he started Dianetics in 1950, together with documents belonging to third persons which had apparently been stolen by Hubbard or his agents. Defendant Armstrong took the documents from Ms. Black and placed them in a safe location on the property. He then searched for and located another twenty or more boxes containing similar materials, which were poorly maintained.

On January 8, 1980, Defendant Armstrong wrote a petition to Hubbard requesting his permission to perform the research for a biography to be done about his life. The petition states that Defendant Armstrong had located the subject materials and lists of a number of activities he wished to perform in connection with the biography research.

Hubbard approved the petition, and Defendant Armstrong became the L. Ron Hubbard Personal Relations Officer Researcher (PPRO Res). Defendant claims that this petition and its approval forms the basis for a contract between Defendant and Hubbard. Defendant Armstrong's supervisor was then Laurel Sullivan, L. Ron Hubbard's Personal Public Relations Officer.

During the first part of 1980, Defendant Armstrong moved all of the L. Ron Hubbard Archives materials he had located at Gilman Hot Springs to an office in the Church of Scientology Cedars Complex in Los Angeles. These materials comprised approximately six file cabinets. Defendant Armstrong had located himself in the Cedars Complex, because he was also involved in "Mission Corporate Category Sort-Out," a mission to work out legal strategy. Defendant Armstrong was involved with this mission until June of 1980.

It was also during this early part of 1980 that Hubbard left the location in Gilman Hot Springs, California, and went into hiding. Although Defendant Armstrong was advised by Laurel Sullivan that no one could communicate with Hubbard, Defendant Armstrong knew that the ability for communication existed, because he had forwarded materials to Hubbard at his request in mid-1980.

Because of this purported inability to communicate with Hubbard, Defendant Armstrong's request to purchase biographical materials of Hubbard from people who offered them for sale went to the Commodore's Messenger Organization, the personal representatives of Hubbard.

In June of 1980 Defendant Armstrong became involved in the selection of a writer for the Hubbard biography. Defendant Armstrong learned that Hubbard had approved of a biography proposal prepared by Omar Garrison, a writer who was not a member of Scientology. Defendant Armstrong had meetings with Mr. Garrison regarding the writing of the biography and what documentation and assistance would be made available to him. As understood by Mr. Garrison, Defendant Armstrong represented Hubbard in these discussions.

Mr. Garrison was advised that the research material he would have at his disposal were Hubbard's personal archives. Mr. Garrison would only undertake a writing of the biography if the materials provided to him were from Hubbard's personal archives, and only if his manuscript was subject to the approval of Hubbard himself.

In October of 1980 Mr. Garrison came to Los Angeles and was toured through the Hubbard archives materials that Defendant Armstrong had assembled up to that time. This was an important "selling point" in obtaining Mr. Garrison's agreement to write the biography. On October 30, 1980, an agreement was entered into between Ralston-Pilot, ncv. F/S/O Omar V. Garrison, and AOSH DK Publications of Copenhagen, Denmark, for the writing of a biography of Hubbard.

Paragraph 10B of the agreement states that:

> "Publisher shall use its best efforts to provide Author with an office, an officer assistant and/or

> research assistant, office supplies and any needed archival and interview materials in connection with the writing of the Work."

The "research assistant" provided to Mr. Garrison was Defendant Armstrong.

During 1980 Defendant Armstrong exchanged correspondence with Intervenor regarding the biography project. Following his approval by Hubbard as biography researcher, Defendant Armstrong wrote to Intervenor on February 5, 1980, advising her of the scope of the project. In the letter Defendant stated that he had found documents which included Hubbard's diary from his Orient trip, poems, essays from his youth, and several personal letters, as well as other things.

By letter of February 11, 1980, Intervenor responded to Defendant, acknowledging that he would be carrying out the duties of Biography Researcher.

On October 14, 1980, Defendant Armstrong again wrote to Intervenor, updating her on "Archives materials" and proposing certain guidelines for the handling of those materials.

It was Intervenor who, in early 1981, ordered certain biographical materials from "Controller Archives" to be delivered to Defendant Armstrong. These materials consisted of several letters written by Hubbard in the 1920's and 1930's, Hubbard's Boy Scout books and materials, several old Hubbard family photographs, a diary kept by Hubbard in his youth, and several other items.

Defendant Armstrong received these materials upon the order of Intervenor, following his letter of October 15, 1980, to her in which Defendant stated, at page 7, that there were materials in the "Controller Archives" that would be helpful to him in the biography research.

After these materials were delivered to Defendant Armstrong, Intervenor was removed from her Scientology position of Controller in 1981, presumably because of her conviction for the felony of obstruction of justice in connection with the theft of Scientology documents from various government offices and agencies in Washington, D.C.

During the time Defendant Armstrong worked on the biography project and acted as Hubbard Archivist, there was never any mention that he was not to be dealing with Hubbard's personal documents or that the delivery of those documents to Mr. Garrison was not authorized.

For the first year or more of the Hubbard biography and archive project, funding came from Hubbard's personal staff unit at Gilman Hot Springs, California. In early 1981, however, Defendant Armstrong's supervisor, Laurel Sullivan, ordered him to request that funding come from what was known as SEA Org Reserves. Approval for this change in funding came from the SEA Org Reserves Chief and Watch Dog Committee, the top Commodores Messenger Organization unit, who were Hubbard's personal representatives.

From November of 1980 through 1981, Defendant Armstrong worked closely with Mr. Garrison, assembling Hubbard's archives into logical categories, copying them and arranging the copies of the Archives materials into bound volumes. Defendant Armstrong made two copies of almost all documents copied for

Mr. Garrison - one for Mr. Garrison and the other to remain in Hubbard Archives for reference or recopying. Defendant Armstrong created approximately 400 binders of documents. The vast majority of the documents for Mr. Garrison came from Hubbard's personal Archives, of which Defendant Armstrong was in charge. Materials which came from other Archives, such as the Controller Archives, were provided to Defendant Armstrong by Scientology staff members who had these documents in their care.

It was not until late 1981 that Plaintiff was to provide a person to assist on the biography project by providing Mr. Garrison with "Guardian Office' materials, otherwise described as technical materials relating to the operation of Scientology. The individual appointed for this task was Vaughn Young. Controller Archives and Guardian Office Archives had no connection to the Hubbard Archives, which Defendant Armstrong created and maintained as Hubbard's personal materials.

In addition to the assemblage of Hubbard's Archives, Defendant Armstrong worked continually on researching and assembling materials concerning Hubbard by interviewing dozens of individuals, including Hubbard's living aunt, uncle, and four cousins. Defendant Armstrong did a geneology study of Hubbard's family and collected, assembled, and read hundreds of thousands of pages of documentation in Hubbard's Archives.

During 1980 Defendant Armstrong remained convinced of Hubbard's honesty and integrity and believed that the representations he had made about himself in various publications were truthful. Defendant Armstrong was devoted to

Hubbard and was convinced that any information which he discovered to be unflattering of Hubbard or contradictory to what Hubbard has said about himself, was a lie being spread by Hubbard's enemies. Even when Defendant Armstrong located documents in Hubbard's Archives which indicated that representations made by Hubbard and the Organization were untrue, Defendant Armstrong would find some means to "explain away" the contradictory information.

Slowly, however, throughout 1981, Defendant Armstrong began to see that Hubbard and the Organization had continuously lied about Hubbard's past, his credentials, and his accomplishments. Defendant Armstrong believed, in good faith, that the only means by which Scientology could succeed in what Defendant Armstrong believed was its goal of creating an ethical environment on earth, and the only way Hubbard could be free of his critics, would be for Hubbard and the Organization to discontinue the lies about Hubbard's past, his credentials, and accomplishments. Defendant Armstrong resisted any public relations piece or announcement about Hubbard which the L. Ron Hubbard Public Relations Bureau proposed for publication which was not factual. Defendant Armstrong attempted to change and make accurate the various "about the author" sections in Scientology books, and further, Defendant rewrote or critiqued several of these and other publications for the L. Ron Hubbard Public Relations Bureau and various Scientology Organizations. Defendant Armstrong believed and desired that the Scientology Organization and its leader discontinue the perpetration of the

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massive fraud upon the innocent followers of Scientology, and the public at large.

Because of Defendant Armstrong's actions, in late November of 1981, Defendant was requested to come to Gilman Hot Springs by Commodore Messenger Organization Executive, Cirrus Slevin. Defendant Armstrong was ordered to undergo a "security check," which involved Defendant Armstrong's interrogation while connected to a crude Scientology lie detector machine called ar E-meter.

The Organization wished to determine what materials Defendant Armstrong had provided to Omar Garrison. Defendant Armstrong was struck by the realization that the Organization would not work with him to correct the numerous fraudulent representations made to followers of Scientology and the publi about L. Ron Hubbard and the Organization itself. Defendant Armstrong, who, for twelve years of his life, had placed his complete and full trust in Mr. and Mrs. Hubbard and the Scientology Organization, saw that his trust had no meaning an that the massive frauds perpetrated about Hubbard's past, credentials, and accomplishments would continue to be spread.

Less than three weeks before Defendant Armstrong left Scientology, he wrote a letter to Cirrus Slevin on November 25 1981, in which it is clear that his intentions in airing the inaccuracies, falsehoods, and frauds regarding Hubbard were done in good faith. In his letter he stated as follows:

> "If we present inaccuracies, hyperbole or downright lies as fact or truth, it doesn't matter what slant we give them, if

disproved the man will look, to outsiders at least, like a charlatan. This is what I'm trying to prevent and what I've been working on the past year and a half.

. . .

"and that is why I said to Norman that it is up to us to insure that everything which goes out about LRH is one hundred percent accurate. That is not to say that opinions can't be voiced, they can. And they can contain all the hype you want. But they should not be construed as facts. And anything stated as a fact should be documentable.

"We are in a period when 'investigative reporting' is popular, and when there is relatively easy access to documentation on a person. We can't delude ourselves I believe, if we want to gain public acceptance and cause some betterment in society, that we can get away with statements, the validity of which we don't know.

"The real disservice to LRH, and the ultimate make-wrong is to go on assuming that everything he's ever written or said is one hundred percent accurate and publish it as such without verifying it. I'm

> talking here about biographical or non-technical writings. This only leads, should any of his statements turn out to be inaccurate, to a make-wrong of him, and consequently his technology.
>
> "That's what I'm trying to remedy and prevent.
>
> . . .
>
> "To say that LRH is not capable of hype, errors or lies is certanly [sic] not granting him much of a beingness. To continue on with the line that he has never erred nor lied is counterproductive. It is an unreal attitude and too far removed from both the reality and people in general that it would widen public unacceptance.
>
> . . .
>
> ". . . That is why I feel the falsities must be corrected, and why we must verify our facts and present them in a favorable light."

The remainder of the letter contains examples of facts about Hubbard which Defendant Armstrong found to be wholly untrue or inaccurate and which were represented as true by the Hubbards and the Scientology Organization.

In December of 1981 Defendant Armstrong made the decision to leave the Church of Scientology. In order to continue in his commitment to Hubbard and Mr. Garrison in the biography project, he copied a large quantity of documents, which Mr. Garrison had requested or which would be useful to him for the biography. Defendant Armstrong delivered all of this material to Mr. Garrison the date he left the SEA Organization and kept nothing in his possession.

Thereafter, Defendant Armstrong maintained friendly relations with Hubbard's representatives by returning to the Archives office and discussing the various categories of materials. In fact on February 24, 1982, Defendant Armstrong wrote to Vaughn Young, regarding certain materials Mr. Young was unable to locate for Omar Garrison.

After this letter was written, Defendant Armstrong went to the Archives office and located certain materials Mr. Garrison had wanted which Hubbard representatives claimed they could not locate.

At the time Defendant Armstrong left the SEA Organization, he was disappointed with Scientology and Hubbard, and also felt deceived by them. However, Defendant Armstrong felt he had no enemies and felt no ill will toward anyone in the Organization or Hubbard, but still believed that a truthful biography should be written.

After leaving the SEA Organization, Defendant ARmstrong continued to assist Mr. Garrison with the Hubbard biography project. In the spring of 1982, Defendant Armstrong at Mr. Garrison's request, transcribed some of his interview tapes, copied some of the documentation he had, and assembled several more binders of copied materials. Defendant Armstrong also set up shelves for Mr. Garrison for all the biography research materials, worked on a cross-reference systems, and continued to do library research for the biography.

On February 18, 1982, the Church of Scientology International issued a "Suppressive Person Declare Gerry Armstrong," which is an official Scientology document issued against individuals who are considered as enemies of the Organization. Said Suppressive Person Declare charged that Defendant Armstrong had taken an unauthorized leave and that he was spreading destructive rumors about Senior Scientologists.

Defendant Armstrong was unaware of said Suppressive Perso Declare until April of 1982. At that time a revised Declare was issued on April 22, 1982. Said Declare charged Defendant Armstrong with 18 different "Crimes and High Crimes and Suppressive Acts Against the Church." The charges included theft, juggling accounts, obtaining loans on money under false pretenses, promulgating false information about the Church , its founder, and members, and other untruthful allegations designed to make Defendant Armstrong an appropriate subject of the Scientology "Fair Game Doctrine." Said Doctrine allows an suppressive person to be "tricked, cheated, lied to, sued, or destroyed."

The second declare was issued shortly after Defendant Armstrong attempted to sell photographs of his wedding on boar Hubbard's ship (in which Hubbard appears), and photographs belonging to some of his friends, which also included photos o L.R. Hubbard while in seclusion. Although Defendant Armstrong delivered the photographs to a Virgil Wilhite for sale, he never received payment or return of his friend's photographs. When he became aware that the Church had these photographs, he went to the Organization to request their return. A loud and boisterous argument ensued, and he eventually was told to leave the premises and get an attorney.

From his extensive knowledge of the covert and intelligence operations carried out by the Church of Scientology of California against its enemies (suppressive persons), Defendant Armstrong became terrified and feared that his life and the life of his wife were in danger, and he also feared he would be the target of costly and harassing lawsuits. In addition, Mr. Garrison became afraid for the security of the documents and believed that the intelligence network of the Church of Scientology would break and enter his home to retrieve them. Thus, Defendant Armstrong made copies of certain documents for Mr. Garrison and maintained them in a separate location.

It was thereafter, in the summer of 1982, that Defendant Armstrong asked Mr. Garrison for copies of documents to use in his defense and sent the documents to his attorneys, Michael Flynn and Contos & Bunch.

After the within suit was filed on August 2, 1982, Defendant Armstrong was the subject of harassment, including being followed and surveilled by individuals who admitted employment by Plaintiff; being assaulted by one of these individuals; being struck bodily by a car driven by one of these individuals; having two attempts made by said individuals apparently to involve Defendant Armstrong in a freeway automobile accident; having said individuals come onto Defendant Armstrong's property, spy in his windows, create disturbances, and upset his neighbors. During trial when it appeared that Howard Schomer (a former Scientologist) might be called as a defense witness, the Church engaged in a somewhat sophisticated effort to suppress his testimony. It is not clear how the Church became aware of defense intentions to call Mr. Schomer as a witness, but it is abundantly clear they sought to entice him back into the fold and prevent his testimony.

~~RECEIVED~~ FILED

OCT 6 - 1995 9217

KEENAN G. CASADY, CLERK
U.S. BANKRUPTCY COURT

P. NO:95-1164

EARING DATE:10/06/95
EARING TIME:11:00 AM

PLAINTIFF:CHURCH OF SCIENTOLOGY INTERNATION
DEFENDANT:GERALD ARMSTRONG
COUNSEL:ANDREW H. WILSON

AUSE OF ACTION:MOTION TO STRIKE DEFENDANT GERALD ARMSTRONG'S AMENDED ANSWER

Shauna Rajkowsk

BEFORE HEARING:________
AFTER HEARING: ✓

OFF CAL:________
CONT. TO |___|___|___|

STIP:________
DISMISS:________

UBMITTED:________
DENIED: ✓

GRANTED:________
DEFAULT:________

TRIAL SET FOR |___|___|___|
BRIEFS BY |___|___|___|
DISCOVERY BY |___|___|___|

TO PREPARE NOTICE ________
TO PREPARE ORDER ________

PLAINTIFF DEFENDANT COURT

ORIGINAL

Law Offices
HUB LAW OFFICES
711 Sir Francis Drake Boulevard
San Anselmo, California 94960
(415) 258-0360

FORD GREENE, Bar # 107601

Attorney for Defendant
GERALD ARMSTRONG

(SPACE BELOW PROVIDED FOR FILING STAMP ONLY)

9218

FILED
NOV 17 1995
HOWARD HANSON
MARIN COUNTY CLERK
By ______ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION, a California for-profit corporation; DOES 1 through 100, inclusive,

Defendants.

No. 157 680

ARMSTRONG'S SUBMISSION OF EVIDENCE UNDER SEAL THAT WAS PREVIOUSLY STRICKEN ON 10/1795 IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION ON FIRST CAUSE OF ACTION OF ARMSTRONG'S FIRST AMENDED CROSS-COMPLAINT

Date: 12/1/95
Time: 9:00 a.m.
Dept: One

Because the evidence upon which defendant and cross-complainant Armstrong relies in his opposition to plaintiff and cross-defendant's motion for summary adjudication was in part stricken by the Court in its order filed October 17, 1995, it is resubmitted herein under seal so that the file and the record is complete.

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PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

ARMSTRONG'S SUBMISSION OF EVIDENCE UNDER SEAL THAT PREVIOUSLY STRICKEN ON 10/17/95 IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION ON FIRST CAUSE OF ACTION OF ARMSTRONG'S CROSS-COMPLAINT

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON,ESQ. BY FAX
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028

[ ] (Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee.

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: November 17, 1995

Said materials are as follows:

Exhibit Stricken	Location of Exhibit
1. HCO Bulletin of May 11, AD13	Exhibit B to Declaration of Hana Whitfield (Exhibit 2 in Evidence Vol. VIII) in opposition to motions for summary adjudication of 20th cause of action; and 13th, 16th, 17th and 19th causes of action of second amended complaint.
2. Resistive Cases/Former Therapy	Exhibit B to Declaration of Dennis Erlich (Exhibit 3 in Evidence Vol. VIII) in opposition to motions for summary adjudication of 20th cause of action; and 13th, 16th, 17th and 19th causes of action of second amended complaint.
3. Resistive Cases/Former Therapy	Exhibit B to Declaration of Keith Scott (Exhibit 5 in Evidence Vol. VIII) in opposition to motions for summary adjudication of 20th cause of action; and 13th, 16th, 17th and 19th causes of action of second amended complaint.

DATED: November 17, 1995

HUB LAW OFFICES

By:

FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

ORIGINAL

Law Offices
HUB LAW OFFICES
711 Sir Francis Drake Boulevard
San Anselmo, California 94960
(415) 258-0360

FORD GREENE, Bar # 107601

Attorney for Defendant
GERALD ARMSTRONG

(SPACE BELOW PROVIDED FOR FILING STAMP ONLY)

9221

FILED
NOV 17 1995
HOWARD HANSON
MARIN COUNTY CLERK
By ________ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION, a California for-profit corporation; DOES 1 through 100, inclusive, Defendants.	No. 157 680 ARMSTRONG'S NOTICE OF RELIANCE ON EVIDENCE PREVIOUSLY SUBMITTED ON SEPTEMBER 18, 1995 IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION ON FIRST CAUSE OF ACTION OF ARMSTRONG'S FIRST AMENDED CROSS-COMPLAINT Date: 12/1/95 Time: 9:00 a.m. Dept: One

Because the evidence upon which defendant and cross-complainant Armstrong relies in his opposition to plaintiff and cross-defendant's motion for summary adjudication is the same as that upon which Armstrong relied with respect to the motions for summary adjudication as to the 13th, 16th, 17th, 19th and 20th causes of action on the second amended complaint, because such material is voluminous, and in order to avoid unnecessary and wasteful duplication of such material, Armstrong hereby gives notice that he will rely on such evidence in his opposition to the motion for summary adjudication on the first cause of action of his cross-complaint.

True and correct copies of each face page of Volumes 1 - IX of said evidence are attached hereto in order to ensure that this notice is clear with respect to such evidence.

DATED: November 17, 1995

HUB LAW OFFICES

By:____________________________
FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

9223

FILED

SEP 18 1995

HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy

Gerald Armstrong
715 Sir Francis Drake Boulevard
San Anselmo, CA 94960
(415)456-8450
In Propria Persona

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION a California for-profit corporation; DOES 1 through 100, inclusive, Defendants.	No. 157 680 **EVIDENCE IN SUPPORT OF OPPOSITION TO MOTIONS FOR SUMMARY ADJUDICATION OF 20TH CAUSE OF ACTION; AND 13TH, 16TH, 17TH & 19TH CAUSES OF ACTION OF SECOND AMENDED COMPLAINT** Date: 9/29/95 Time: 9:00 a.m. Dept: One Trial Date: Not Set

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VOLUME I

Gerald Armstrong
715 Sir Francis Drake Boulevard
San Anselmo, CA 94960
(415)456-8450
In Propria Persona

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SEP 18 1995 9224

HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION a California for-profit corporation; DOES 1 through 100, inclusive, Defendants.	No. 157 680 **EVIDENCE IN SUPPORT OF OPPOSITION TO MOTIONS FOR SUMMARY ADJUDICATION OF 20TH CAUSE OF ACTION; AND 13TH, 16TH, 17TH & 19TH CAUSES OF ACTION OF SECOND AMENDED COMPLAINT** Date: 9/29/95 Time: 9:00 a.m. Dept: One Trial Date: Not Set

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SEP 18 1995

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VOLUME II

Gerald Armstrong
715 Sir Francis Drake Boulevard
San Anselmo, CA 94960
(415)456-8450
In Propria Persona

FILED 9225
SEP 18 1995
HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION a California for-profit corporation; DOES 1 through 100, inclusive,

Defendants.

No. 157 680

EVIDENCE IN SUPPORT OF OPPOSITION TO MOTIONS FOR SUMMARY ADJUDICATION OF 20TH CAUSE OF ACTION; AND 13TH, 16TH, 17TH & 19TH CAUSES OF ACTION OF SECOND AMENDED COMPLAINT

Date: 9/29/95
Time: 9:00 a.m.
Dept: One
Trial Date: Not Set

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SEP 18 1995
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VOLUME III

FILED

SEP 18 1995

HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy

9226

Gerald Armstrong
715 Sir Francis Drake Boulevard
San Anselmo, CA 94960
(415)456-8450
In Propria Persona

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION a California for-profit corporation; DOES 1 through 100, inclusive,

Defendants.

No. 157 680

EVIDENCE IN SUPPORT OF OPPOSITION TO MOTIONS FOR SUMMARY ADJUDICATION OF 20TH CAUSE OF ACTION; AND 13TH, 16TH, 17TH & 19TH CAUSES OF ACTION OF SECOND AMENDED COMPLAINT

Date: 9/29/95
Time: 9:00 a.m.
Dept: One
Trial Date: Not Set

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SEP 18 1995

HUB LAW OFFICES

VOLUME IV

Gerald Armstrong
715 Sir Francis Drake Boulevard
San Anselmo, CA 94960
(415)456-8450
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION a California for-profit corporation; DOES 1 through 100, inclusive, Defendants.	No. 157 680 **EVIDENCE IN SUPPORT OF OPPOSITION TO MOTIONS FOR SUMMARY ADJUDICATION OF 20TH CAUSE OF ACTION; AND 13TH, 16TH, 17TH & 19TH CAUSES OF ACTION OF SECOND AMENDED COMPLAINT** Date: 9/29/95 Time: 9:00 a.m. Dept: One Trial Date: Not Set

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION a California for-profit corporation; DOES 1 through 100, inclusive, Defendants.	No. 157 680 **EVIDENCE IN SUPPORT OF OPPOSITION TO MOTIONS FOR SUMMARY ADJUDICATION OF 20TH CAUSE OF ACTION; AND 13TH, 16TH, 17TH & 19TH CAUSES OF ACTION OF SECOND AMENDED COMPLAINT** Date: 9/29/95 Time: 9:00 a.m. Dept: One Trial Date: Not Set

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION a California for-profit corporation; DOES 1 through 100, inclusive,

Defendants.

No. 157 680

EVIDENCE IN SUPPORT OF OPPOSITION TO MOTIONS FOR SUMMARY ADJUDICATION OF 20TH CAUSE OF ACTION; AND 13TH, 16TH, 17TH & 19TH CAUSES OF ACTION OF SECOND AMENDED COMPLAINT

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MARIN COUNTY CLERK
by J. Steele, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION a California for-profit corporation; DOES 1 through 100, inclusive,

Defendants.

No. 157 680

EVIDENCE IN SUPPORT OF OPPOSITION TO MOTIONS FOR SUMMARY ADJUDICATION OF 20TH CAUSE OF ACTION; AND 13TH, 16TH, 17TH & 19TH CAUSES OF ACTION OF SECOND AMENDED COMPLAINT

Date: 9/29/95
Time: 9:00 a.m.
Dept: One
Trial Date: Not Set

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VOLUME VIII

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MARIN COUNTY CLERK
by J. Steele, Deputy

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Gerald Armstrong
715 Sir Francis Drake Boulevard
San Anselmo, CA 94960
(415)456-8450
In Propria Persona

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION a California for-profit corporation; DOES 1 through 100, inclusive, Defendants.	No. 157 680 **EVIDENCE IN SUPPORT OF OPPOSITION TO MOTIONS FOR SUMMARY ADJUDICATION OF 20TH CAUSE OF ACTION; AND 13TH, 16TH, 17TH & 19TH CAUSES OF ACTION OF SECOND AMENDED COMPLAINT** Date: 9/29/95 Time: 9:00 a.m. Dept: One Trial Date: Not Set

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VOLUME IX

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

ARMSTRONG'S NOTICE OF RELIANCE ON EVIDENCE PREVIOUSLY SUBMITTED ON SEPTEMBER 18, 1995 IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION ON FIRST CAUSE OF ACTION OF ARMSTRONG'S CROSS-COMPLAINT

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON,ESQ. BY FAX
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028

[ ] (Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee.

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: November 17, 1995

ORIGINAL

Law Offices
HUB LAW OFFICES
711 Sir Francis Drake Boulevard
San Anselmo, California 94960
(415) 258-0360

FORD GREENE, Bar # 107601

Attorney for Defendant
GERALD ARMSTRONG

(SPACE BELOW PROVIDED FOR FILING STAMP ONLY)

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NOV 17 1995

HOWARD HANSON
MARIN COUNTY CLERK
By Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION, a California for-profit corporation; DOES 1 through 100, inclusive, Defendants.	No. 157 680 REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION ON FIRST CAUSE OF ACTION OF ARMSTRONG'S FIRST AMENDED CROSS-COMPLAINT Date: 12/1/95 Time: 9:00 a.m. Dept: One

Defendant and Cross-Complainant Gerald Armstrong requests that this Court take judicial notice of the following records of certain United States District Courts:

A. Memorandum Opinion, United States District Court Senior Judge John L. Kane Jr. in *Religious Technology Center v. F.A.C.T.NET, INC.; Lawrence Wollersheim and Robert Penny*, United States District Court for the District of Colorado, Case No. 95-K-2143, filed October 3, 1995.

B. Opinion and Order in *Church of Scientology International v. Time Warner, Inc.; Time Inc. Magazine Company, and Richard Behar*, the United States District Court, Southern District of New York, Case No. 92 Civ. 30324 (PKL) November 14, 1995.

DATED: November 17, 1995

HUB LAW OFFICES

By:__________________________
FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION ON FIRST CAUSE OF ACTION OF ARMSTRONG'S CROSS-COMPLAINT

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

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[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: November 17, 1995

PUBLISH

UNITED STATES DISTRICT COURT
DENVER, COLORADO

SEP 15 1995 9236

JAMES R. MANSPEAKER
CLERK

BY DEP. CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 95-B-2143

RELIGIOUS TECHNOLOGY CENTER, a California non-profit corporation,

Plaintiff,

v.

F.A.C.T.NET, INC., a Colorado corporation: LAWRENCE WOLLERSHEIM, an individual; and ROBERT PENNY, an individual,

Defendant.

MEMORANDUM OPINION AND ORDER

KANE, J.

On August 21, 1995 Religious Technology Center ("RTC"), a California non-profit corporation, filed a verified complaint against Lawrence Wollersheim, Robert Penny and F.A.C.T.NET, Inc. ("FACTNET") for injunctive relief and damages for copyright infringement (17 U.S.C. § 501) and trade secrets misappropriation (Colo. Rev. Stat. § 7-74-102 to -110 (1986)).

Jurisdiction is based on 28 U.S.C. §§ 1331 and 1338(a) and (b) in that this is an action for copyright infringement under 17 U.S.C. § 501. Supplemental jurisdiction exists under 28 U.S.C. § 1367 over the trade secrets misappropriation claim, which RTC alleges arises out of the same transaction and occurrences.

Before me is RTC's motion for preliminary injunction.

I. Background.

RTC is one of the formal entities constituting the Church of Scientology (the "Church") founded by L. Ron Hubbard. FACTNET is a non-profit educational and charitable corporation registered and

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with its principle place of business in Colorado. Wollersheim and Penny are former Scientologists.[1] Wollersheim serves as President of the Board and Executive Director of FACTNET and Penny is a member of the FACTNET Board.

Defendants, operating on minimal financial resources, maintain a library and archive information concerning, inter alia, an ongoing public controversy regarding the Church's status as a religious tax exempt organization and charges that its practices involve harmful psychological coercion which has resulted in mental and physical harm to a significant number of its adherents.

Much of the information maintained by Defendants is made available publicly on FACTNET's Bulletin Board Service on the international computer network known as the Internet.[2] Other data is stored in a private portion of the FACTNET library which includes information concerning and provided by former Scientologists and their families.

RTC alleges Defendants have placed on the Internet unauthorized copies of unpublished religious works called OT materials, often referred to as "Advanced Technology." They list

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[1] The Church of Scientology and Wollersheim have opposed each other in litigation in various cases. In Wollersheim v. Church of Scientology, 15 Cal. App. 4th 1476 (Cal. Ct. App. 1992), an action in which Wollersheim alleged intentional and negligent infliction of emotional injury, the court affirmed its prior judgment in his favor as to the cause of action for intentional infliction with the exception of the $30 million damage award which it reduced to $500,000 for compensatory damage and $2 million for punitive damages. A final judgment which the evidence discloses remains unpaid.

[2] A bulletin board service ("BBS") usually requires users to dial in through telephone lines to access specialized information or services.

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the materials in issue ("the Works") in Exhibit "A" to the complaint.

RTC maintains it has the exclusive license to the Works. It asserts the materials consist of unpublished works of L. Ron Hubbard, the founder of the Church of Scientology. The Church only permits access to each of the works to members who have attained the proper level of spiritual enlightenment and made the requisite financial contributions. Such access is through a highly controlled system known as "auditing" involving supervision by a senior member of the Church. RTC claims the Works are available at only seven sites around the world and are never removed from these locations.

Defendants maintain any of the Works in its possession were obtained lawfully and are maintained in the non-public section of Defendants' library. Wollersheim has provided consulting services to lawyers representing clients in litigation involving the Church but denied making copies of the Works for this purpose. Defendants assert they have not posted any of the Works to the Internet for public availability and that it is their policy not to do so.

According to Wollersheim, the only deviation from this policy was between August 1 and August 3, 1995, when, due to miscommunication, Arnold P. Lerma, a FACTNET director posted some of the Works to the Internet. The portions of the Works published by Lerma had been part of an unsealed public court record in the Central District of California in Church of Scientology

International v. Fishman, No. CV 91-6426 HLH (Tx) C.D. Cal.[3] These materials were attached to an affidavit filed by Fishman in that case. Wollersheim testified he received a copy of the affidavit from Fishman's counsel in the course of the consulting services Wollersheim provided in that case.

On August 15, 1995, Defendants posted a message to a newsgroup on the Internet claiming Lerma had acted on their behalf and with their endorsement and that they stood behind his actions.

II. Procedural History.

On August 21, 1995, Judge Babcock, ruling on ex parte motions, granted a temporary restraining order against Defendants. His order restrained Defendants from the unauthorized copying, use or reproduction of the Works identified in Exhibit "A" to the complaint or any other part of the works that are part of the Advanced Technology, in particular the copying into "any computer data base, information service, storage facility, archives, or other computerized network or facility." The order further restrained the destruction or concealing by Defendants of such Works in their possession. It also required RTC to file a bond in the amount of $10,000 with the court forthwith. Judge Babcock set a hearing for a preliminary injunction before me on August 25, 1995 due to his being unavailable on that date.

---

[3] On August 11, 1995, RTC sued Lerma in the United States District Court for the Eastern District of Virginia for copyright infringement and trade secret misappropriation in Religious Technology Center v. Lerma, No. 95-1107-A. On August 11, 1995, RTC obtained a restraining order and order of seizure and impoundment against Lerma. On August 22, 1995, RTC amended its complaint in that case, adding the Washington Post and two of its reporters as defendants. On August 30, 1995, that court denied RTC's motion seeking to enjoin the Post defendants from copying, disclosing, using, displaying, or reproducing Advanced Technology materials which it had obtained from the same public court file.

Judge Babcock ordered Defendants to deliver the infringing articles within their possession and control into the custody of RTC's counsel. In this regard, he issued a writ of seizure and ordered a portion of the court file sealed until execution of the writ of seizure. Judge Babcock also granted RTC's motion for expedited discovery, ordering the depositions of all three Defendants to take place on August 23, 1995.

On August 22, 1995, extensive materials, including computer equipment, computer software and voluminous documents were seized from Defendants' premises pursuant to the writ. They were placed in the custody of RTC's counsel who proceeded to search for allegedly infringing materials.

On August 23, 1995, Defendants filed motions for a protective order, for temporary stay of expedited discovery and to require immediate delivery of confidential, proprietary, and privileged documents belonging to Defendants to their counsel of record, Thomas B. Kelley. RTC filed an opposition to the motion for a stay.

On August 24, 1995 I ordered an extension of the time for taking the depositions of Defendants and an extension of the restraining order until September 8, 1995 when the preliminary injunction hearing commenced. On August 25, 1995 I ordered Defendant's counsel or his representative be allowed to be present while Plaintiff's counsel searched the impounded evidence. I further ordered any items to which Defendants' might claim privilege to be segregated from the materials impounded and handed over to the court.

The preliminary injunction hearing took place before me on September 8, 11, and 12, 1995. At the termination thereof, I issued an oral ruling. I denied RTC's request for a preliminary injunction and ordered RTC to return and restore to the Defendants all seized materials. I ordered Defendants to maintain the status quo as to the possession of all copyrighted materials at issue in the case and restricted each of Defendants to making only fair use of the materials. I reserved the right to clarify my oral order by way of a written opinion. This is that opinion.

III. Preliminary Injunction.

I have authority to issue a preliminary injunction under Federal Rule of Civil Procedure 65. In addition, the Copyright Act specifically authorizes me to grant a preliminary injunction "on such terms as [I] may deem reasonable to prevent or restrain infringement of a copyright." 17 U.S.C. § 502. The Colorado Uniform Trade Secrets Act similarly grants me the power to grant injunctive relief "to prevent or restrain actual or threatened misappropriation of a trade secret."

A preliminary injunction is an extraordinary remedy providing the potential for considerable harm yet its emergency nature does not afford the court the usual degree of careful consideration afforded by the deliberative processes of a trial. As a consequence, the issuance of such an injunction, like the power of contempt, is one which is at best used sparingly, if at all.

Moreover, the very purpose of an injunction is to preserve the status quo ante. That is a rather elegant piece of Latin which means the last existing state of peaceable, noncontested conditions which preceded the pending controversy. I will not dwell on this, but it is helpful to observe that our legal forefathers were not fools; the complete phrase is status quo ante bellum which literally means "the state of things before the war began."

Given this purpose and the caution the law prescribes there are four basic considerations or findings which must be made before an injunction can issue. These same four factors likewise assist in determining the scope of the injunction and the conditions which attach to it.

> A party seeking injunctive relief must establish:
>
> (1) it will suffer irreparable injury unless the injunction issues;
>
> (2) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party;
>
> (3) the injunction would not be adverse to the public interest; and
>
> (4) substantial likelihood that the movant will eventually prevail on the merits.

Walmer v. United States Dep't of Defense, 52 F.3d 851, 854 (10th Cir. 1995). The Tenth Circuit has adopted a modified interpretation of the fourth "likelihood of success" element. Id. "If the movant has satisfied the first three requirements for a preliminary injunction, the movant may establish likelihood of success by showing questions going to the merits so serious, substantial, difficult and doubtful, as to make the issues ripe for litigation and deserving of more deliberative investigation." Id. This modified test applies, however, only where the first three requirements are satisfied.

Similarly, the less rigorous test for injunctive relief sometimes employed in copyright cases is only applicable where the plaintiff has made a prima facie showing of infringement. See, e.g., Financial Control Assoc's v. Equity Builders, Inc., 799 F. Supp. 1103, 1113 (D. Kan. 1992); 3 Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 14.06[A] (1995).

The circumstances of this case warrant consideration and balancing of all four factors.

A. Substantial Likelihood of Success on the Merits.

1. Copyright Infringement Claim.

RTC contends it will succeed on the merits of its claims for copyright infringement because it owns a valid copyright and the copyrighted work was copied by Defendants without its authorization.

To prevail in a copyright infringement action, a plaintiff must prove (1) ownership of a valid copyright and (2) defendant copied, "protected components of the copyrighted material." Gates Rubber Co. v. Bando Chemical Indus., Ltd., 9 F.3d 823, 831 (10th Cir. 1993). If a certificate of registration in accordance with 17 U.S.C. § 410(c) has been obtained, there is a presumption in favor of the plaintiff that a valid copyright exits. Id. at 832. The defendant then has the burden of overcoming this presumption. Id.

RTC claims it has certificates of registration for the Works, is their exclusive licensee and is entitled to protect them as if it were the original holder of the copyrights. At the outset of the preliminary injunction hearing, Defendants' counsel stipulated only for the purposes of this proceeding that the Works were originated by L. Ron Hubbard and that RTC has a valid title to the copyright in the Works.

Once a plaintiff shows it holds a valid copyright, it must then prove the defendant unlawfully appropriated some protected portions of the copyrighted work at issue. Id. This question breaks down into two separate inquiries:

> 1) [W]hether the defendant, as a factual matter, copied portions of the plaintiff's [writings]; and 2) whether, as a mixed issue of fact and law, those elements of the [writings] that have been copied are protected expression and of such importance to the copied work that the appropriation is actionable.

Id. In Gates Rubber the court noted that the inquiry does not end with a finding that the defendant copied the plaintiff's materials. "Liability for copyright infringement will only attach where protected elements of a copyrighted work are copied." Id. at 833. The Copyright Act provides:

> In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

17 U.S.C. § 102(b). The 1976 House Report noted copyright protection does not preclude others from using the ideas or

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information revealed by the author's work, rather it refers only to the expression of the work adopted by the author. H.R. Rep. No. 1476, 94th Cong., 2d Sess. 57 (1976), reprinted in 17 U.S.C.A § 102 app. at 17 (1976)).

RTC asserts Defendants themselves and through others directly copied the copyrighted Works. It maintains Defendants duplicated portions of the Advanced Technology materials onto a newsgroup[4] on the Internet and onto a Web site,[5] making them accessible to Internet subscribers. These subscribers could then download the works onto their own computers and have personal copies.

RTC additionally claims Defendants provided Arnaldo Lerma with copies of the materials at issue. Lerma ultimately posted these copies onto the Internet. RTC claims the act of providing Lerma with the copies constitutes contributory copyright infringement.

The evidence showed, however, that, apart from the Lerma posting, the only copying of the Works by Defendants was scanning them onto their computer and placing them in the private section of their library without making them available to the public over the Internet or otherwise. Copying of this sort by Defendants falls within the well established limitation on the exclusive right of copyright ownership recognized in the Copyright Act, 17 U.S.C § 107.

---

[4] A "newsgroup" is an electronic discussion group, serving as a bulletin board for users to post universally accessible messages, and to read and reply to those from others.

[5] World Wide Web is a network of computers on the Internet that maintains documents users can read and transfer with a number of programs.

Under this limitation, "the fair use of a copyrighted work . . . for purposes such as criticism, comment, news reporting, teaching . . . scholarship, or research, is not an infringement of copyright." 17 U.S.C.A. § 107. The Copyright Act lists four factors for consideration in determining whether a particular use made of a work is fair use:

> (1) the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
>
> (2) the nature of the copyrighted work;
>
> (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
>
> (4) the effect of the use upon the potential market for or value of the copyrighted work.

Id.

"Fair use" is a factual determination. Harper & Row, Publishers, Inc. v. Nation Enterprises, 471 U.S. 539, 549 (1985). Each fact must be assessed in light of the total circumstances of the case and then a conclusion can be made as to whether the doctrine applies.

In Harper & Row, a magazine editor obtained a copy of a copyrighted manuscript which he knew he was not authorized to publish. In an attempt to get a "scoop" on the magazine that had the rights to publish the piece, he published excerpts from it. The Court found for the copyright holders, determining on a factor by factor basis that there was no valid fair use on the part of the defendant. the Court held the questioned publication's effect on the market is the "single most important element of fair use." Id.

at 566.

Even if, as RTC maintains, the Works have not been published, the concerns of the Court in Harper & Row do not apply here. Defendants' use of the materials was not with the intention of depriving the planned publication of its full impact. Further, no evidence was presented as to the effect of the Defendants' copying of the Works upon the potential market for them.[6]

The evidence showed the Works are esoteric in nature and are delivered to certain followers by advanced Scientologists known as "auditors" as part of an elaborate system of instruction. The only financial harm RTC would suffer would be if followers were to forsake the Church's didactic methodology in favor of self instruction through the Works copied by Defendants. There was no suggestion, let alone evidence, of this potential for financial loss to the Church.[7]

---

[6] This case is distinguishable from Bridge Publications, Inc. v. Vien, 827 F.Supp. 629 (S.D. Cal. 1993), appeal reinstated and transferred, 53 F.3d 344 (Fed. Cir. (Cal.) 1994). The Vien court held there was a copyright infringement and fair use did not apply. In that case, as here, an affiliate of the Church sued to enjoin the use of copyrighted works. There, however, the defendants were charging for classes that used the documents as part of their study. Id. at 632. The court found defendants used the materials for the same purposes as the holders of the copyright. Id. at 635. The court also found that there was a wholesale copying of the work and that this weighed heavily against fair use. Id. at 636. Finally, the Vien court found that because the defendant's use of the materials was substantially similar to that of the Church, there was an economic harm as demand for sale or distribution from the Church would diminish. Id.

[7] An argument that RTC may be harmed financially by Defendants' intended criticism of the Works through copying would not prevail. In a similar case, the Second Circuit ruled that economic harm from criticism is not actionable under copyright

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The alleged copying by the Defendants was not of a commercial nature. Rather, it was made for non-profit purposes to advance understanding of issues concerning the Church which are the subject of ongoing public controversy.

RTC has not introduced the Works in their entirety into evidence to enable comparison of the amount and substantiality of the portion of the Works copied with each copyrighted work as a whole. Notably, however, even if a work is introduced in its entirety, the copying may nevertheless constitute fair use. See, e.g., Sony Corp. v. Universal City Studios, 464 U.S. 417, reh'g denied, 465 U.S. 1112 (1984); Rotbart v. O'Dwyer Co., 34 U.S.P.Q. 2d 1085 (S.D.N.Y. 1985).

Defendants maintain and the evidence does not refute that the Lerma postings to the Internet were made in the context of ongoing dialogue in the particular newsgroup to which they were posted. they form part of the topical debate concerning whether the Works are of substance or are perpetuated as part of systemic mind control.

No evidence was introduced showing a likelihood that a follower of the Church would consider the postings by Lerma as a market substitute for the Works. Nor did the evidence show that the postings were of a commercial nature or had any effect on the potential market for the works. As such, the postings may well be considered as having been made for the purposes of criticism,

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laws. New Era Publications Int'l v. Carol Publishing Group, 904 F.2d 152, 160 (2nd Cir.), cert. denied, 498 U.S. 921 (1990).

comment or research falling within the fair use doctrine.

At this preliminary stage of proceedings, I find RTC has not shown a substantial likelihood of success on the merits of its copyright claim.

2. Misappropriation of Trade Secrets Claim.

RTC claims Defendants have misappropriated its trade secrets by acquiring, disclosing and using portions of the Works without authorization. Such claim is governed by the Colorado Uniform Trade Secrets Act and is not preempted by federal copyright statutes. See Gates Rubber, 9 F.3d at 846-47.

Colorado defines trade secrets as:

> [T]he whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, improvement, confidential business or financial information, listing of names, addresses, or telephone numbers, or other information relating to any business or profession, which is secret and of value. To be a "trade secret" the owner thereof must have taken measures to prevent the secret from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

Colo. Rev. Stat. § 7-74-102(4) (1986).

What constitutes a trade secret is a question of fact for the trial court. Gates Rubber, 9 F.3d at 848. Colorado courts apply a number of factors in determining whether a trade secret exists. They include:

> 1) the extent to which the information is known outside the business;
>
> 2) the extent to which it is known to those inside the business, i.e., by the employees;
>
> 3) the precautions taken by the holder of the trade secret to guard the secrecy of the information;

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> 4) the savings effected and the value to the holder in having the information as against competitors;
>
> 5) the amount of effort or money expended in obtaining and developing the information; and
>
> 6) the amount of time and expense it would take for others to acquire and duplicate the information.

Colorado Supply Co., Inc. v. Stewart, 797 P.2d 1303, 1306 (Colo.App. 1990), cert. denied, Oct. 7, 1991.

Despite RTC and the Church's elaborate and ardent measures to maintain the secrecy of the Works; they have come into the public domain by numerous means. RTC's assertion that the only way in which the materials have escaped its control was through two thefts in Denmark and England was not supported by the evidence. A former senior Scientology official testified to ongoing difficulties the Church incurred in keeping the Works secret, including members losing materials in their possession. The evidence also showed portions of the Works have been made available on the Internet through persons other than Lerma, with the potential for downloading by countless users.

The Works posted by Lerma were publicly available as part of an unsealed public court record in the Central District of California in Church of Scientology International v. Fishman, No. CV 91-6426 HLH (Tx), C.D. Cal. Wollersheim testified copies of the Works in his possession were sent to him by an attorney representing defendants in that case for whom he had provided consulting services.

In August 1995, reporters of the Washington Post obtained copies of the Works from the unsealed Fishman file. The newspaper's publication of portions of the materials prompted RTC to request injunctive relief in Religious Technology Center v. Lerma, Civil Action No. 95-1107-A (E.D. Va.). On August 30, 1995, that court found the materials had escaped into the public domain and onto the Internet and that Lerma was not their only source on the Internet. Id., slip op. at 14-15 (E.D. Va. Aug. 30, 1995). The court concluded RTC could not establish for the purpose of the preliminary injunction motion that the documents were "not generally known" as required by the Virginia statute.

In the course of the hearing before me, RTC changed its position with regard to what materials constitute the purported trade secrets. At the outset, RTC maintained the entire Works were trade secrets. After evidence was heard indicating that the Works were in the public domain, RTC claimed that only portions of the Works, rather than the whole were secret. RTC's ambivalence and admission as to the non-secret nature of certain portions of the Works casts some doubt casts on the secret status of Works as a whole.

The evidence showed the Works are widely known outside of the Church through multiple sources. As such, they are not secret within the meaning of the Colorado statute and RTC has not shown a substantial likelihood of success on the merits of its trade secrets claim.

B. Irreparable harm.

I do not find RTC will suffer irreparable harm if the broad injunction sought is not granted. There has been no showing that

RTC has lost nor will lose competitive advantage through Defendants' fair use of the Works, nor that such use has been for commercial purpose.

RTC claims use of the materials impedes its right to exercise its religious belief that the materials must be kept secret. I am not persuaded that a denial of the injunction sought will deprive followers of the Church of their freedom to exercise their religious beliefs. RTC effectively requests that I advance its religion at the expense of Defendants' lawful rights to use the materials for the purposes of criticism and research. The United States Constitution, common law and the Copyright Act preclude me from doing so.

C. Balancing of Hardships.

The evidence does not reflect that the threatened injury to RTC outweighs the damage the broad injunction sought may cause the Defendants. Such relief would effectively pull the plug on Defendants' electronic library, infringe not only on their rights of criticism and research but be the death knell of FACTNET. Any threatened injury to RTC is outweighed by this potentially devastating hardship to Defendants.

D. Public Interest.

Public interest lies with the free exchange of dialogue on matters of public concern. The injunction sought would silence the Defendants as participants in an ongoing debate involving matters of significant public controversy. Relief of this kind does not serve the public interest.

IV. Conclusion.

Having weighed all the relevant factors, I conclude RTC has not shown a substantial likelihood of success on the merits and the balance of harms weighs in favor of Defendants. Accordingly,

IT IS ORDERED THAT Plaintiff's motion for preliminary injunction is DENIED;

IT IS FURTHER ORDERED THAT Plaintiff is to return and restore to Defendants immediately and at Plaintiff's expense all seized materials in the condition they were when taken and to the precise places from which they were taken;

IT IS FURTHER ORDERED THAT Defendants are to maintain the status quo as to their possession of all copyrighted materials at issue in this case and are restricted to making only fair use thereof. Defendants are prohibited from making any additional copies of the materials or transferring them in any manner or publicizing them other than in the context of fair use.

Dated this 15th day of September, 1995 at Denver, Colorado.

JOHN L. KANE, JR.
U.S. SENIOR DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JAMES R. MANSPEAKER, CLERK
U.S. Courthouse
1929 Stout Street, C-145
Denver, CO 80294
(303) 844-3433

Date: September 15, 1995

Case No. 95-B-2143

The undersigned hereby certifies that on the above date a true and correct copy of the preceding **MEMORANDUM OPINION AND ORDER** signed by Judge John L. Kane, Jr. on **September 15, 1995** was mailed to the following:

Todd P. Blakely, Esq.
Robert R. Brunelli, Esq.
1700 Lincoln St. Suite 3500
Denver, CO 80203

Judge Lewis Babcock

Helena K. Kobrin
7629 Fulton Avenue
North Hollywood, CA 91605

Thomas B. Kelley, Esq.
Natalie Hanlon-Leh, Esq.
370 17th Street, Suite 2500
Denver, CO 80202-4004

Earle Coley, Esq.
21 Custom House
Boston, MA 02110

JAMES R. MANSPEAKER, CLERK
By: N. Hatcher
Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHURCH OF SCIENTOLOGY
INTERNATIONAL,

Plaintiff,

- against -

TIME WARNER, INC., TIME INC.
MAGAZINE COMPANY, and RICHARD
BEHAR,

Defendants.

92 Civ. 3024 (PKL)

OPINION AND ORDER

APPEARANCES

MORRISON COHEN SINGER & WEINSTEIN, LLP
750 Lexington Avenue
New York, New York 10022

Jonathan W. Lubell, Esq., of counsel
Jonathan M. Plissner, Esq., of counsel

Attorneys for Plaintiff

CAHILL GORDON & REINDEL
80 Pine Street
New York, New York 10005

Floyd Abrams, Esq., of counsel
Dean Ringel, Esq., of counsel

Attorneys for Defendants

LEISURE, District Judge:

Plaintiff Church of Scientology International ("CSI") brought this action to recover for damages allegedly suffered from the publication of false and defamatory statements concerning CSI in the cover story of the May 6, 1991 issue of Time magazine. Defendants Time Warner, Inc., Time Inc. Magazine Company, and Richard Behar (collectively "Time") move this Court for summary judgment, pursuant to Federal Rule of Civil Procedure 56, on the grounds that they lacked actual malice in publishing the article about CSI, an admitted public figure. See Plaintiff's Response to Defendants' First Set of Requests for Admission to Plaintiff. For the reasons stated below, defendants' motion is granted in part and denied in part.

DISCUSSION

"Summary judgment is proper only if, viewing all evidence in the light most favorable to the nonmoving party, there is no genuine issue of material fact" as to an essential element of a claim. Buttry v. General Signal Corp., No. 95-7135, 1995 WL 628556, at *3 (2d Cir. Oct. 26, 1995). A public figure suing for libel must prove, as one of the essential elements of the claim, that the defendant published the material with actual malice, i.e., actual knowledge of its falsity or with serious subjective doubts as to its truth. See New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964); St. Amant v. Thompson, 390 U.S. 727, 731-32 (1968). The First Amendment further requires that the plaintiff prove actual malice with clear and convincing evidence. See id. Therefore, "there is no genuine issue if the evidence presented in the opposing affidavits is of insufficient caliber or quantity to allow a rational finder of fact to find actual malice by clear and convincing evidence." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254 (1986).

Although a defendant's state of mind is at issue in a libel case covered by New York Times, that fact alone cannot preclude summary judgment, for First Amendment protection cannot be emasculated by unwillingness on the part of a court to grant summary judgment where "affirmative evidence of the defendant's state of mind" is lacking. A libel suit cannot be allowed to get to the jury, at enormous expense to the defendant, based on mere assertions of malice by the plaintiff. Cf. St. Surin v. Virgin Islands Daily News, Inc., 21 F.3d 1309, 1318 (3d Cir. 1994) ("Summary judgment for the publisher is quite often appropriate because of the difficulty a public official has in showing 'actual malice.'"). Indeed, without judicious use of summary judgment to dispose of libel suits, "the threat of being put to the defense of a lawsuit . . . may be as chilling to the exercise of First Amendment freedoms as fear of the outcome of the lawsuit itself." Immuno AG. v. Moor-Jankowski, 74 N.Y.2d 548, 561, 549 N.E.2d 129, 135, 549 N.Y.S.2d 938, 944 (1989) (internal quotation marks omitted), vacated, 497 U.S. 1021 (1990), adhered to, 77 N.Y.2d 235, 567 N.E.2d 1270, 566 N.Y.S.2d 906 (1991), cert. denied, 500 U.S. 954 (1991). Because the freedoms guaranteed by

> "In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy."

Id. at 271 (quoting Cantwell v. Connecticut, 310 U.S. 296, 310 (1940)). Because sharp disagreement is essential to robust debate about important issues, "[a]ctual malice under the New York Times standard should not be confused with the concept of malice as an evil intent or a motive arising from spite or ill will." Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 510 (1991). The speaker's belief in his statements, even his exaggerations, enhances, rather than diminishes, the likelihood that they are protected from libel attack by the First Amendment. Only where the speaker himself lacks this conviction, where the speaker entertains serious doubt as to the veracity of his statements, is the false statement actionable. See St. Amant, 390 U.S. at 731.

As a threshold matter, then, the Court considers plaintiff's assertions that Behar, after publishing an article in Forbes critical of the church,

> targeted the Church with a fixed view of it as a 'destructive cult.' In the next five years, through the publication of his article in the May 6, 1991 issue of Time, Behar

the First Amendment are designed to ensure that debate, not litigation, is vigorous, the subjective nature of the test of liability cannot create a bar to summary disposition of libel suits.[1] See McLee v. Chrysler Corp., 38 F.3d 67, 68 (2d Cir. 1994) (ruling that district court's view -- that summary judgment was unavailable in discrimination cases where employer's intent was at issue -- was unsupportable). Indeed, this Court finds little to distinguish silence enforced by oppressive litigation from "silence coerced by law -- the argument of force in its worst form." Whitney v. California, 274 U.S. 357, 375-76 (1927) (Brandeis, J., concurring).

In addition, the court must "consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks." New York Times Co., 376 U.S. at 270. As quoted in New York Times,

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[1] In this respect, the Court notes that both debate and litigation have been vigorous in the case at bar. CSI published an 80-page rebuttal to the Time article, which it distributed to church members, business leaders, and political figures. See Memorandum of Law in Support of Defendants' Motion for Summary Judgment ("Def.'s Memo.") at 3. In addition, CSI published a series of full-page advertisements in USA Today challenging the article and Time's accuracy and biases in publishing it. See id.; Affidavit of Lynn R. Farny ("Farny Aff.") ¶ 16, Exs. 14, 15. The discovery in this case has been extensive, even though discovery has not yet been directed to the issue of truth or falsity. For example, Richard Behar, the author of the article, was deposed for 16 1/2 days over a 12 month period. See Def.'s Memo. at 4. The submissions to the Court in support of or in opposition to this motion consist of thousands of pages of memoranda, affidavits, and exhibits.

> refined his focus -- gathering negative information from Scientology adversaries and proposing anti-Church articles -- while never changing any view about the Church, never accepting anything a Scientologist said and uniformly ignoring anything positive he learned about the Church.

Plaintiff's Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment at 2. As noted, malice in the sense of hatred or ill-will is often indicative of lack of the actual malice required under New York Times, and therefore would tend to undermine, not support, plaintiff's case. In addition, "reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing." St. Amant, 390 U.S. at 731. However, the combination of inadequate investigation with bias on the part of the publisher can give rise to an inference of actual malice. See Harte-Hanks Communications, Inc. v. Connaughton, 491 U.S. 657, 682 (1989). With a showing of an extreme departure from standard investigative techniques, bias of the reporter becomes relevant to explain this extreme departure as more than mere carelessness -- rather as purposeful avoidance of the truth. Plaintiff therefore devotes much of its opposition to the motion to attempting to demonstrate Behar's predetermined bias toward the church. However, plaintiff has failed to demonstrate the correlative circumstance of inadequate investigation to make its evidence of bias probative of actual malice, rather than probative of lack thereof. Without a showing of inadequate investigation, bias merely confirms the publisher's firmly-held belief in the allegedly defamatory statements.

With these principles in mind, the Court considers each allegedly libelous statement individually to determine whether a rational finder of fact could find actual malice by clear and convincing evidence. See Tavoulareas v. Piro, 817 F.2d 762, 794 (D.C. Cir.) (en banc) ("[D]efamation plaintiffs cannot show actual malice in the abstract; they must demonstrate actual malice in conjunction with a false defamatory statement." (emphasis in original)), cert. denied, 484 U.S. 870 (1987).

A. Statements Set Forth at ¶ 40

Paragraph 40 of the complaint sets forth several statements alleged to be false and defamatory. (The text of the sentences as they appear in the article is set forth below; the portions quoted in the complaint are underlined.)

> 1. "In reality the church is a hugely profitable global racket that survives by intimidating members and critics in a Mafia-like manner."
>
> 2. "Says Cynthia Kisser, the [Cult Awareness] network's Chicago-based executive director: 'Scientology is quite likely the most ruthless, the most classically terroristic, the most litigious and the most lucrative cult the country has ever seen. No cult extracts more money from its members.'"
>
> 3. "Those who criticize the church -- journalists, doctors, lawyers and even judges -- often find themselves engulfed in litigation, stalked by private eyes, framed for fictional crimes, beaten up or threatened with death."

1. Mafia-Like Intimidation

Time relied on many sources as the basis for its belief that "the church . . . survives by intimidating members and critics in a Mafia-like manner." None of these sources is so obviously incredible that a reasonable jury could infer from Time's reliance on them knowledge of falsity or subjective doubt as to veracity. *See St. Amant*, 390 U.S. at 732; *cf. id.* ("Professions of good faith will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call."). *Compare Harte-Hanks*, 491 U.S. at 691 ("The hesitant, inaudible, and sometimes unresponsive and improbable tone of Thompson's answers to various leading questions raise obvious doubts about her veracity."). On the contrary, Behar relied on affidavits from former high-ranking Scientologists, newspaper and periodical articles, interviews and personal experience, and published court opinions, often issued after the benefit of adversarial presentation of testimony, which supported his professed belief that CSI intimidated critics and members. *See* Affidavit of Richard Behar ("Behar Aff.") ¶¶ 28-61. The Court finds that based on this evidence, no reasonable jury could find that CSI had proven by clear and convincing evidence that Time either knew or entertained serious doubts that the statement was false.

2. Most Ruthless, Classically Terroristic Cult

This statement appeared in the article in the form of a quotation from Cynthia Kisser, executive director of the Cult

Awareness Network. "Repetition of another's words does not release one of responsibility if the repeater knows that the words are false or inherently improbable, or there are obvious reasons to doubt the veracity of the person quoted or the accuracy of his reports." *Goldwater v. Ginzburg*, 414 F.2d 324, 337 (2d Cir. 1969), *cert. denied*, 396 U.S. 1049 (1970). Based on the material supporting Behar's statement regarding Mafia-like intimidation, *see* Behar Aff. ¶¶ 28-61; *see also id.* ¶¶ 62-67, Behar's repetition of Kisser's statement was not done with knowledge that the statement was false or inherently improbable. Nor are there obvious reasons to doubt Kisser's veracity. There is no doubt that her views are deeply opposed to CSI's views, and each likely regards the other's conduct as reprehensible if not criminal, *see* Farny Aff. ¶ 98, but such sharp disagreement and Kisser's obvious antagonistic relationship with Scientology does not amount to an obvious reason to doubt her veracity. On the contrary, as executive director of an organization dedicated to studying so-called cults, her judgment as to CSI's ruthlessness and terroristic practices likely carried credence with Behar. *See id.* ¶ 62. The Court therefore finds that a reasonable jury could not find that plaintiff had demonstrated actual malice on the part of Time in publishing this statement by clear and convincing evidence.

3. *Journalists, Doctors, Lawyers, and Judges Framed, Beaten Up, or Threatened With Death*

In light of Behar's beliefs regarding his own experiences with Scientology, the admitted harassment of Paulette Cooper by

Scientology's Guardian's Office (which has been disbanded), and the other sources relied on by Behar, see Behar Aff. ¶¶ 85-93, the Court finds no evidence that Behar made the statement regarding journalists with actual malice. Similarly, there are not "obvious reasons to doubt" Behar's sources for his statement regarding doctors, lawyers, and judges. See St. Amant, 390 U.S. at 732. Although Behar does not have convincing evidence to link CSI with many of the strange incidents befalling these groups of people in conflict with Scientology, that fact alone does not allow a reasonable jury to conclude that Behar entertained doubts as to the veracity of his statement that these incidents are linked to CSI. Compare id. at 732 (good faith unlikely where story is fabricated by defendant, based on his imagination, or based on unverified anonymous telephone call). Therefore, the Court finds that no reasonable jury could find by clear and convincing evidence that Time published the above statement with actual malice.

B. Statements Set Forth at ¶ 58

CSI challenges the following as false and defamatory:

> "THE LOTTICKS LOST THEIR SON, Noah, who jumped from a Manhattan hotel clutching $171, virtually the only money he had not yet turned over to Scientology. His parents blame the church and would like to sue but are frightened by the organization's reputation for ruthlessness.
>
> "His death inspired his father Edward, a physician, to start his own investigation of the church. 'We thought Scientology was something like Dale Carnegie,' Lottick says.

> 'I now believe it's a school for psychopaths. Their so-called therapies are manipulations. They take the best and brightest people and destroy them.'
>
> "It was too late. 'From Noah's friends at Dianetics' read the card that accompanied a bouquet of flowers at Lottick's funeral. Yet no Scientology staff members bothered to show up."

The primary sources relied on by Behar for these statements are the parents of Noah Lottick. The Lotticks affirmed the accuracy of each statement in the article. See Reply Memorandum of Law in Further Support of Defendants' Motion for Summary Judgment ("Def.'s Reply") at 12. Furthermore, the Lotticks are not obviously lacking in credibility, and the statements are not inherently improbable. Nevertheless, Behar made a thorough investigation of this aspect of his article by discussing it with various persons who knew Noah. Although Behar can be criticized for not interviewing Fred Lemons, an active Scientologist, asserted Scientology staff member, and former roommate of Noah Lottick, this omission is not such that it might raise an inference of purposeful avoidance of the truth. Cf. Harte-Hanks, 491 U.S. at 682 ("[W]hile denials coming from Connaughton's supporters might be explained as motivated by a desire to assist Connaughton, a denial coming from [the uninterviewed] Stephens would quickly put an end to the story."). Any information to be gleaned from Lemons might be expected to be similar to, though less authoritative than, information that might be obtained from the director of the Scientology Dianetics Center, whom Behar twice attempted to contact. See Behar Aff. ¶ 106. In short, besides minor omissions in investigation, from which no inference of purposeful avoidance of the truth could reasonably be drawn, (even combined with Behar's alleged bias, *see supra*) CSI has not produced evidence such that a reasonable jury could find by clear and convincing evidence that Behar published the statements with actual malice. On the contrary, as reflected in Behar's notes from one of his conversations with the Lotticks, it appears that Noah had spent the money to which he had access, that Dr. Lottick had concluded that Scientology therapies were manipulations, and that no Scientology staff members attended the funeral.[2] *See* Affidavit of Jonathan W. Luball, Esq., at Ex. 41. Therefore, the Court finds that no reasonable jury could find by clear and convincing evidence that Time published the above statement with actual malice.

C. Statements Set Forth at ¶ 45

Of the statements set forth at paragraph 45 of the complaint, pursuant to this Court's ruling of November 23, 1992, only the following remains at issue:

> "Scientology denies any tie to the Fishman Scam, a claim strongly disputed by both Fishman and his longtime psychiatrist, Uwe Geertz, a prominent Florida hypnotist. Both men claim that when arrested, Fishman was ordered by the church to kill Geertz and then do an 'EOC,' or end of cycle, which is church jargon for suicide."

---

[2] Although CSI asserts that Fred Lemons is a staff member, there is no evidence that Behar knew this fact. In addition, if Behar were trying to avoid this fact, he would not have contacted the Scientology center.

Behar relied on Steven Fishman, Uwe Geertz, Fishman's psychologist, Marc Nurik, Fishman's former counsel, Vicki Aznaran, a former Scientologist, and Robert Dondero, the assistant United States Attorney who prosecuted Fishman for stock fraud. Although Fishman in many respects is not highly credible, based on the corroboration of aspects of his claims by other sources, this Court finds that his claims are not obviously incredible. *Cf. St. Amant*, 390 U.S. at 732 (good faith unlikely where unverified reliance on obviously incredible source). Specifically, Behar relied on Geertz's evaluation of Fishman's claims, Vicki Aznaran's corroboration of Fishman and Geertz's claims regarding the length of Fishman's involvement with the church, the depth of knowledge of Scientology that Fishman demonstrated, and the corroboration of certain claims by Robert Dondero. The fact that Dondero did not believe Fishman's claims does not undermine Behar's belief because Dondero was at the time prosecuting Fishman, and that prosecution would be undermined by accepting Fishman's account of Scientology's involvement with Fishman. *Cf. Harte-Hanks*, 491 U.S. at 682 (denials coming from interested witnesses would not cause reporter to question veracity of allegations). Therefore, the Court finds that no reasonable jury could find by clear and convincing evidence that Time published the above statement with actual malice.

D. Statements Set Forth in ¶ 52

of the statements set forth at paragraph 52 of the complaint, pursuant to this Court's ruling of November 23, 1992, only the following remains at issue:

> "One source of funds for the Los Angeles-based church is the notorious, self-regulated stock exchange in Vancouver, British Columbia, often called the scam capital of the world."

The Court finds that a reasonable jury could find by clear and convincing evidence that Time published the above statement with actual malice.

CONCLUSION

For the reasons stated above, defendants' motion for summary judgment is HEREBY DENIED as to the statement set forth at paragraph 52 of the complaint, and HEREBY GRANTED as to all other statements.

SO ORDERED

New York, New York
November 14, 1995

U.S.D.J.

ORIGINAL

HUB LAW OFFICES
Ford Greene, Esquire
California Bar No. 107601
711 Sir Francis Drake Boulevard
San Anselmo, CA 94960-1949
Telephone (415)258-0360

9270

FILED
NOV 17 1995
HOWARD HANSON
MARIN COUNTY CLERK
By ______ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION California for-profit corporation; DOES 1 through 100, inclusive, Defendants.	No. **157 680** **ARMSTRONG'S SEPARATE STATEMENT OF DISPUTED AND UNDISPUTED FACTS IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION OF THE FIRST CAUSE OF ACTION OF ARMSTRONG'S FIRST AMENDED CROSS-COMPLAINT** Date: 12/1/95 Time: 9:00 a.m. Dept: One Trial Date: Not Set

RESPONDING PARTY GERALD ARMSTRONG'S STATEMENT OF DISPUTED AND UNDISPUTED FACTS

Defendant Gerald Armstrong ("Armstrong") submits this separate statement in opposition to Plaintiff Church of Scientology International's ("Scientology") separate statement of undisputed facts with reference to supporting evidence pursuant to CCP Section 437c (b).

__ISSUE__:

__Scientology's Claim__: The Church is entitled to summary adjudication of the First Cause Of Action because all of the

issues presented by this request for declaratory relief have already been resolved against Armstrong and in the Church's favor.

PLAINTIFF CSI'S MATERIAL FACTS AND SUPPORTING EVIDENCE	**DEFENDANT ARMSTRONG'S MATERIAL FACTS AND SUPPORTING EVIDENCE**
1. In the First Cause of Action, Armstrong seeks the following relief: [A] judicial determination of his rights and duties, and a declaration that the only provisions of the settlement agreement which are valid are those which directly pertain to the dismissal of his cross-complaint in Armstrong I in consideration for the payment of a sum of money, and that paragraphs 4A, 4B, 7D, 7G, 7H, 7I, 10, 18D, 18E of the settlement agreement should be severed and held not to be legally enforceable because they were designed to suppress evidence and obstruct justice. Plaintiff's Evidence: Request for Judicial Notice, Exhibit G, Verified Amended Cross-Complaint (hereinafter "Cross-complaint"), p. 29, ¶ 61.	1. Undisputed.

Order of Permanent Injunction.	government, or government organs or entities, and not disclosing the contents of this "agreement;" 7I, as to wiping the "slate" clean; 10, as to assisting or advising governmental agencies; 18D, as to not disclosing the contents of this "agreement;" 18E, as to forbearing and refraining from doing any act or exercising any right inconsistent with this "agreement."
3. Paragraphs 4A and 4B cincern an appeal which has already become final, and as to which no rights, duties or obligations could be enforced in the future. Plaintiff's Evidence: 3. Exhibit A to Exhibit A to Request for Judicial Notice, Verified Second Amended Complaint, Mutual Release of	3. Undisputed. These provisions, however, are evidence supporting the argument that the "settlement agreement" is in violation of public policy. Armstrong incorporates herein his additional disputed facts and evidentiary support in No. 1A-E, 98-175 below.

2. The orders of this Court granting summary judgment, including the Order of Permanent Injunction, are orders enforcing paragraphs 7D, 7E, 7G, 7H, 7I, 10, 18D, 18E of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986.

Plaintiff's Evidence: Exhibit A to Exhibit A to Request for Judicial Notice, Verified Second Amended Complaint, Mutual Release of All Claims and Settlement Agreement, ¶¶ 7D, 7E, 7G, 7H, 7I, 10, 18D, 18E; Request for Judicial Notice, Exhibit C, Order Granting Summary Adjudication of the Fourth and Sixth Causes of Action; Request for Judicial Notice, Exhibit D, Order Granting Summary Adjudication of the Thirteenth, Sixteenth, Seventeenth, and Nineteenth Causes of Action; Request for Judicial Notice, Exhibit D,

2. Disputed. This court's orders do not enforce the following illegal conditions in the "settlement agreement:"

7D, as to the government, government organs or entities;

7E, as to all documents filed in this action, and Armstrong's "continuing duty to return to CSI any and all documents;"

7G, as to cooperating with any person adverse to Scientology, and not cooperating in any manner with any organization aligned against Scientology;

7H, as to not participating in any legislative proceding adverse to Scientology, and not being amenable to service of process;

7H, as to not discussing his litigation or experiences with his attorney, and not discussing his litigation or experiences with the

All Claims and Settlement
Agreement, ¶¶ 4A and 4B;
Request for Judicial Notice,
Exhibit J, Portions of the
Opinion of the Court of
Appeal, Second Appellate
District, in the case of
Church of Scientology of
California v. Armstrong, Case
No. B069450.

ADDITIONAL DISPUTED FACTS

Armstrong's Claim: Scientology is not entitled to summary adjudication of the Twentieth Cause of Action because: 1. Scientology obtained Armstrong's signature on the subject settlement document by duress; 2. Scientology obtained Armstrong's signature on the subject settlement document by fraud; 3. the settlement agreement is unfair, unreasonable, unconscionable and cannot be specifically performed; 4. Scientology's hands are unclean in this transaction and Scientology is therefore barred from obtaining the relief it seeks; 5. the settlement agreement and Scientology's enforcement thereof are obstructive of justice; 6. all of Armstrong's experiences concerning which Scientology seeks to silence him are religious in nature and the silencing of the expression of such experiences by court order is completely barred by the First Amendment to the United States Constitution; and, 7. all of Armstrong's activities which Scientology claims are violations of the subject agreement are religiously motivated and completely protected by the First Amendment, and the Religious Freedom Restoration Act of 1993.

ISSUE NO. I

Armstrong's Claim: Scientology obtained Armstrong's signature on the subject settlement document by duress.

1 A. Armstrong was the target of Scientology's "fair game" acts from the time he left Scientology until the time he signed the settlement agreement. These fair game acts included, but are not limited to: publishing "Suppressive Persons Declares," spying on him, assault, filing false charges with Los Angeles DA, filing false charges with FBI, attempted entrapment, illegal videotaping, battery by a car driven by a hired agent, attempting to involve him in a freeway "accident," filing false declarations, international dissemination of publications falsely accusing him of crimes ("black	1 A. Exhibit 1, Declaration of Gerald Armstrong in Opposition to Motions for Summary Adjudication of 20th Cause of Action; and 13th, 16th, 17th & 19th Causes of Action of Second Amended Complaint, Authenticating Deposition Transcripts and Exhibits, 4:8-6:19, Exhibit 1(G), Declaration of Gerald Armstrong in Opposition to Scientology's Motion for Preliminary Injunction, executed March 16, 1992, and Authenticating Exhibits, 4:26-7:7; Exhibit 1(G)(C), "Penalties for Lower Conditions," Scientology Policy Letter by L. Ron Hubbard dated October 18, 1967; Exhibit 1(G)(L),

propaganda"), filing false contempt of court charges against him, disseminating "confidential" statements made in pastoral "counseling sessions."

"Settlement Agreement" between attorney Michael J. Flynn and his clients in December, 1986, at p. 4, (5); Exhibit 1(G)(M) Letter from Phillip Rodriguez dated November 7, 1984 purporting to authorize eavesdropping on Gerry Armstrong and Michael J. Flynn; Exhibit 1(G)(N), Public Announcement of Los Angeles Police Chief Daryl Gates dated April 23, 1985; Exhibit 1(G)(O), Letter from Los Angeles County Deputy District Attorney Robert N. Jorgenson to Scientology officials dated April 25, 1986; Exhibit 1(H), Declaration of Gerald Armstrong, executed January 13, 1994, and Authenticating Exhibits, pp. 2,3, ¶¶ 5,6; p. 14, ¶ 15; Exhibit, 1(H)(R)(C) "Freedom" published by Scientology April/May, 1985; Exhibit 1(H)CC), "Squirrels," Scientology Office of Special Affairs Executive Directive dated September 20, 1984;

Exhibit 1(B), Declaration of Gerald Armstrong, executed December 25, 1990, and Authenticating Exhibits, p. 1, ¶ 2; Exhibit 1(B)(O) Declaration of Gerald Armstrong, executed October 11, 1986, pp. 3-9, ¶¶ 3-8; Exhibit 1(B)(P), Declaration of Gerald Armstrong, executed November 1, 1986, 2:2-3:3, 6:4-7:5, 7:25-11:12; Exhibit pages to Ex. 1(B)(P) at 22:24-26:8; Exhibit 1(I), Declaration of Gerald Armstrong Executed August 12, 1994, and Authenticating Deposition Transcripts And Exhibits, Exhibit 1(I)(AA), Suppressive Person Declare Gerry Armstrong" dated February 18, 1982; Exhibit 1(I)(BB), "Suppressive Person Declare Gerry Armstrong" dated February 18, 1982, Revised April 22, 1982; Exhibit 1(A), Declaration of Gerald Armstrong, executed March 15, 1990, and Authenticating

Exhibits, p. 1, ¶ 1, Exhibit 1(A)(A), Memorandum of Decision dated June 20, 1984 in Scientology v. Armstrong, LA Superior Court No. C 420153, at 5:3-19; 7:9-12:9; Appendix thereto, pp. 1-15; Exhibit 1(C), Opinion of California Court of Appeal dated July 29, 1991, 283 Cal.Rptr. 917, at 920, 921, 925; Exhibit 1(A)(L), Affidavit of Gerald Armstrong, executed March 7, 1986, at p. 5, ¶ 6; Exhibit 1(E)(E), Declaration of Gerald Armstrong Regarding Alleged "Taint" of Joseph A. Yanny executed September 3, 1991 and filed in Aznaran v. Scientology, US District Court, Central District of California, Case No. CV 88-1786 JMI, pp. 3-5, ¶¶ 13-16; Scientology's Request for Judicial Notice in Support of its Motion for Summary Adjudication of the 13th, 16th, 17th and 19th Causes of

	Action of Second Amended Complaint, Exhibit 1(S) Declaration of Gerald Armstrong executed February 22, 1994 and filed in Scientology v. Steven Fishman, etc al., US District Court for the Central District of California, Case No. 91-6426 HLH (Tx), and exhibits thereto; Scientology's Evidence in Support of Motion for Summary Adjudication of the 20th Cause of Action of Second Amended Complaint, Exhibit 1(A), Mutual Release of All Claims and Settlement Agreement; Ex. 1(H), pp. 7,8, ¶ 12.
B. Armstrong's attorney Michael Flynn was the target of Scientology's fair game from 1979 through the time of the signing of the settlement agreements. Fair game acts against Flynn included, but are not limited to, infiltrating his office,	B. Exhibit 10, Second Declaration of Gerald Armstrong in Opposition to Motion for Summary Adjudication of 13th, 16th, 17th and 19th Causes of Action of Scientology's Second Amended Complaint executed September 9, 1995, 8:18-9:14;

paying known criminals to testify falsely against him, suing him and his office some fifteen times, framing him with the forgery of a $2,000,000 check, and an international "black propaganda campaign."	Ex. 1, 6:20-7:7; Ex. 1(G), 9:6-24; Ex. 1(B), p. 1, ¶ 2, pp. 3,4, ¶8, pp. 5,5, ¶11; Ex. 1(B)(O), pp. 60-74; Ex. 1(H), pp. 8,9, ¶ 12; Exhibit 7, Declaration of Jonathan Atack in Opposition to Motions for Summary Adjudication of 20th Cause of Action; and 13th, 16th, 17th & 19th Causes of Action of Second Amended Complaint, and Authenticating Exhibits, executed April 9, 1995, p. 4, ¶16; Ex. 1(G)(L), pp. 4,5, (5); Ex. 1(G)(M); Ex. 1(G)(N); Ex. 1(G)(O), Ex. 1(H)(R)(C).
C. Flynn told Armstrong that if he didn't sign Scientology's settlement agreement he would be the target of more fair game.	C. Ex. 1, 9:1-15; Ex. 1(G), 9:6-12; Ex. 1(B), pp. 3,4, ¶ 8, p. 5, ¶ 11.
D. Flynn told Armstrong that the other some fifteen people involved in the "global settlement" would continue to	D. Ex. 1, pp. 8,9, ¶ 18; Ex. 1(G), 9:6-12, 10:21-11:28; Ex. 1(B), pp. 3,4, ¶ 8, p. 5, ¶ 11.

be attacked by Scientology if he didn't sign.	
E. Flynn had another client yell at Armstrong when Armstrong objected to the language of the "agreement."	E. Ex. 1(G), 9:15-19; Ex. 1(B), p. 4, ¶ 8.

ISSUE NO. II

Armstrong's Claim: Scientology obtained Armstrong signature on the subject settlement document by fraud.

Armstrong incorporates herein his Disputed Fact and Evidentiary Support No. 1, A-E, supra.

98. Flynn advised Armstrong prior to Armstrong's signing the settlement agreement that Scientology had promised that in exchange for his signing the agreement it was ceasing all fair game activities and all attacks against Armstrong, and everyone else.	98. Ex. 1, 9:1-15; Ex. 1(B), p. 4, ¶9, p. 5, ¶11, pp. 17, 18, ¶¶ 27; Ex. 1(G), 9:25-10:4, 11:15-17; Exhibit 1(S), Ex parte application to continue hearing on motions for summary adjudication and declaration thereto executed April 7, 1995, 5:10-22.
99. The settlement agreement contains the following language: 7 I. "...the "slate" is wiped clean concerning past actions by any party." 18. "(D) The parties hereto and their respective attorneys each agree not to disclose the contents of this executed Agreement. Nothing herein shall be construed to prevent any party hereto or his respective attorney from stating that this civil action has been settled in its entirety. (E) The parties further agree to forbear and refrain	99. Plaintiff's Evidence, Exhibit 1A, Mutual Release of All Claims and Settlement Agreement, pp. 11, 15.

from doing any act or exercising any right, whether existing now or in the future, which act or exercise is inconsistent with this Agreement."	
100. Armstrong believed that the above quoted clauses in the settlement agreement required that Scientology forbear and refrain from further acts of fair game against him, and that Scientology would not say or publish anything about him, other than that the case had been settled in its entirety.	100. Ex. 1, 15:1-10; Ex. 1(G), p. 12, ¶18.
101. Indeed, Scientology entity Author Services, Inc.'s attorney Lawrence Heller, who "was personally involved in the [1986] settlements," stated in a declaration executed November 1, 1989 in support of Scientology's motion to delay or prevent the taking of certain third party	101. Ex. 1(A)(D) Notice of Motion and Motion by Defendant Author Services, Inc to Delay or Prevent the Taking of Certain Third Party Depositions by Plaintiff dated November 1, 1989 in Corydon v. Scientology, LASC No. C 694401, declaration of Lawrence E. Heller, 8:27-9:16.

depositions, including Armstrong's, that:

> "The non-disclosure obligations were a key part of the settlement agreements insisted upon by all parties involved."

102. Attorney Heller repeated this averment in the memorandum of points and authorities, stating:

> "One of the key ingredients to completing these settlements, insisted upon by all parties involved, was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences with the Church of Scientology; (2) any knowledge possessed by the Scientology entities concerning those staff members or parishioners."

102. Ex. 1(A)(D), 4:9-19.

103. In his call to Armstrong on November 20, 1989, Heller

103. Ex. 1(A), p. 21, ¶ 44; Ex. 1(B), p. 6, ¶ 13, pp.

also stated that Scientology had signed a non-disclosure agreement as well and as far as he knew had lived up to the agreement. Armstrong listed out for Heller statements made by Scientology in violation of the agreement.	12,13, ¶19; Ex. 1(B)(L), Notes of Gerald Armstrong of telephone conversation with Lawrence Heller on November 20, 1989; Ex. 1(B)(M), Transcript of Gerald Armstrong's side of telephone conversation with Lawrence Heller on November 20, 1989 p. 2.
104. If Armstrong had known that the meaning of the settlement agreement was that Scientology was free to attack him or anyone else, that it was going to continue fair game as before, and that he would be legally unable to respond or defend himself or anyone else, he would never, for all the money in the world, have signed the document.	104. Ex. 1, 15:1-10; Ex. 1(H), p. 18, ¶17.
105. Since Armstrong signed the settlement agreement, Scientology reneged on its	105. A. Ex. 1(A), pp. 7-9, ¶¶ 15-19, p. 20, ¶ 43; Ex. 1(A)(E), Excerpts from 1987

promise and continued its fair game attacks on him. These fair game attacks after December, 1986, but prior to any acts by Armstrong, which Scientology alleges are breaches of the agreement, include, but are not limited to:	Scientology "Dead Agent" document.
A. Delivering "dead agent documents," on him to various media representatives.	
B. Publishing its own false descriptions of his Scientology experiences.	B. Ex. 1, 10:12-24; Ex. 1(A), pp. 7-9, ¶¶ 15-19; Ex. 1(A)(E).
C. Disseminating to the media an edited, misleading and defamatory version of a secret and illegal videotape its agents made of him.	C. Ex. 1(A), p. 20, ¶ 43; Ex. 1(A)(N), Business card of Eugene M. Ingram on copy face of videocassette; Ex. 1(G), 14:24-15:3.
D. Disseminating his own documents which Scientology itself had requested be sealed.	D. Ex. 1(A), pp. 10-12; Ex. 1(A)(F), First Affidavit of Kenneth Long executed October 5, 1987 and filed in Scientology v. Miller & Penguin Books, High Court of

	Justice, London, England, Case No. 1987 C 6140, p. 2-14, ¶¶ 2-26, and all exhibits thereto.
E. Filing affidavits about him in a civil lawsuit in England which falsely asserted, inter alia, that he violated court orders and was an admitted agent provocateur of the US Government.	E. Ex. 1(A), pp.9-18, ¶¶ 21-39; Ex. 1(A)(F), p. 2-14, ¶¶ 2-26; Ex. 1(A)(G), Second Affidavit of Kenneth Long executed October 5, 1987 and filed in Miller, p. 2-17, ¶¶ 3-32; Ex. 1(A)(H), Third Affidavit of Kenneth Long executed October 5, 1987 and filed in Miller, p. 2, ¶ 3, p. 4, ¶¶ 8,9; Ex. 1(A)(I), First Affidavit of Sheila Chaleff executed October 5, 1987 and filed in Miller, p. 3, ¶ 7; Ex. 1(A)(J), Fourth Affidavit of Kenneth Long executed October 7, 1987 and filed in Miller, p. 2-8, ¶¶ 2-16; Ex. 1(A)(K), Fifth Affidavit of Kenneth Long executed October 8, 1987 and filed in Miller, p. 2-7, ¶¶ 3-15.
F. Threatening him with	F. Ex. 1(A), p. 9, ¶ 20.

being sued if he even talked to attorneys in the case in which the false charges were being made about him.	
G. Threatening to expose a private writing if he did not assist Scientology's effort to prevent a civil litigant, Bent Corydon from obtaining access to the Armstrong case file.	G. Ex. 1(A), p. 18, ¶ 40.
H. Threatening him with being sued if he testified about his Scientology experiences even pursuant to a subpoena.	H. Ex. 1, 11:2-11; Ex. 1(A), pp. 2,3, ¶4, pp. 3,4, ¶¶ 7,8, pp. 7-9, ¶¶ 15-19; pp. 20,21, ¶44; Ex. 1(B), pp. 9,10, ¶ 16; pp. 11-13, ¶¶ 18, 19; Ex. 1(B)(J), Notes of Gerald Armstrong of telephone conversation with Lawrence Heller on October 23, 1989; Ex. 1(B)(K), Notes of Gerald Armstrong of telephone conversation with Lawrence Heller on October 25, 1989; Ex. 1(B)(L); Ex. 1(B)(M); Ex. 1(H), p. 11, ¶ 14.

I. Threatening him with being sued for being in court to attend a hearing concerning his own deposition.	I. Ex. 1(A), p. 23, ¶ 51; Ex. 1(B), pp. 11, 12, ¶18, Ex. 1(B)H, Declaration of Gerald Armstrong, executed March 26, 1990.
106. The first thing Armstrong did in response to Scientology's post-settlement fair game attacks was to file two petitions in the California Court of Appeal to be able to respond in the then pending appeal Scientology had taken from the 1984 decision in the Armstrong case, and the appeal Scientology had taken from the unsealing by Bent Corydon of the Armstrong court file. Over Scientology's objections, the Court of Appeal granted his petitions. The Court also unsealed the subject settlement agreement, which Armstrong had filed as a "sealed exhibit" to his petitions.	106. Ex. 1, 11:11-20; Ex. 1(A), pp. 23,24, ¶¶ 52-54; Ex. 1(A)(P), Respondents's Petition for Permission to File Response and for an Extension of Time to File Response filed in the California Court of Appeal February 28, 1990 in Scientology v. Armstrong, Case No. B025920; Ex. 1(A) and all Exhibits thereto; Ex. 1(A)(Q), Defendants's Petition for Permission to File Response and for Time to File filed in the California Court of Appeal March 1, 1990 in Scientology v. Armstrong, Case No. B038975; Ex. 1(B), and all Exhibits thereto; Ex. 1(G), 15:25-16:4.
107. From the time Armstrong	107. A. a. Ex. 1, p. 20, ¶ 40-

petitioned the Court of Appeal, Scientology has continued its fair game attacks on him without ceasing. These fair game attacks include, but are not limited to: A. Disseminating to the media "dead agent packs" of "black propaganda" on him which provide Scientology's false version of Armstrong's experiences and include at least the following lies: a. that Armstrong testified falsely at trial in 1984;	A, Exhibit O, Set of Bates-stamped Scientology publications, known as "dead agent documents" concerning Gerald Armstrong and Judge Paul G. Breckenridge, Jr., produced by Scientology herein, and authenticated by Scientology representative Lynn R. Farny, at Bates stamped pages 200048, 200054; 200191; 200196.
b. that he "has adopted a degraded life-style;"	b. Ex. 1(O), 200049; 200191.
c. that he was "apparently naked" in a newspaper photo;	c. Ex. 1(O), 200049, 200191.
d. that he is connected to Cult Awareness Network described as "a referral agency for those who engage in	d. Ex. 1(O), 200049; 200191.

the illegal activity of kidnapping adults for the purpose of forcibly persuading them to abandon their religious beliefs;"	
e. that Armstrong's defense at his 1984 trial "was a sham and a fraud;"	e. Ex. 1(O), 200049, 200050; 200192; 200359.
f. that the LAPD "authorized [Scientology's] videotapes of Armstrong;	f. Ex. 1(O), 200050; 200192; 200360.
g. that Armstrong wanted to plant fabricated documents in Scientology files and tell the IRS to conduct a raid;	g. Ex. 1(O), 200050-200052; 200360; 200361; 200669.
h. that he wanted to plunder Scientology for his own financial gain;	h. Ex. 1(O), 200051; 200193.
i. that he never intended to stick to the terms of the settlement agreement;	i. Ex. 1(O), 200053; 200196; 200362.
j. that Armstrong's	j. Ex. 1(O), 200054; 200196.

motives in writing attorney Eric Lieberman regarding the Nothling case were money and power;	
k. that he was incompetent as a researcher on the Hubbard biography project;	k. Ex. 1(O), 200054; 200196; 200367.
l. that he wanted to orchestrate a coup in which members of the US Government would wrest control of Scientology.	l. Ex. 1(O), 200052; 200194.
B. Using transcripts and other documents to attack Armstrong which Scientology itself has insisted be sealed.	B. Ex. 1(O), 200072-200094; 200096-200013; 200670; 200054 ("section 11"); 200055 ("section 13"); 200196 ("section 11"); 200670 ("(See letter, page 31)"); 200361 ("Section 2"); 200368 ("Section 19").
C. Publishing "black propaganda" on Armstrong without stating its source which provide Scientology's	C.a. Exhibit 1(L), Scientology publication entitled ""FACTNet" - Perversions, Criminality and

false version of his experiences and include at least these false and/or perverted charges:	Lies." Scientology at p. 3.
a. that he was formerly a heavy drug user;	
b. that he was paid to provide homosexual sex;	b. Ex. 1(L), at p. 3.
c. that a Marin Independent Journal photo showed him in the nude holding the globe;	c. Ex. 1(L), at p. 3.
d. that he is a psychotic and lives in a delusory world;	d. Exhibit 1(M), Scientology publication entitled ""FACTNet" Still Off the Rails," at p. 2.
D. Scientology (CSI) director Michael Rinder on May 9, 1994, wrote a letter to the Mirror Newspaper Group in London, United Kingdom in which he stated that Armstrong "has now distinguished himself by posing naked in a newspaper;"	D. Exhibit 1(N), Letter from Michael Rinder, Church of Scientology International executive and director of plaintiff herein, to Mirror Group Newspapers in London, United Kingdom dated May 9, 1994, at p. 2.

E. Church of Scientology International President Heber Jentzsch on August 5, 1993 wrote a letter to E! Television in which he stated that Armstrong "has no relation to art or artists...except, of course, for the photo of himself, nude, hugging the globe;"	E. Exhibit 1(U), Letter from Church of Scientology International President Heber Jentzsch to E! Television dated August 5, 1993.
F. Scientology agent Eugene Ingram spread the rumor that Armstrong has AIDS;	F. Ex. 1, 23:20-23, Exhibit 10, Second Declaration of Gerald Armstrong in Opposition to Motion for Summary Adjudication of 13th, 16th, 17th & 19th Causes of Action of Second Amended Complaint, executed September 9, 1995, 10:1-6, 11:13-25; Exhibit 10(A), Videotape taken by Eugene Ingram of Gerald Armstrong at November, 1992 Cult Awareness Convention, produced by Scientology herein (lodged separately).
G. Scientology agent Garry Scarff was briefed by	G. Exhibit 1(K), Declaration of Garry L. Scarff, executed

Ingram to expand on the "fuck buddy" relationship between attorney Ford Greene and Armstrong;	February 11, 1993 and filed herein in opposition to order to show cause re contempt, at 4:6-10, 5:10-12;
H. Filing declarations in various courts containing false charges, and then using the settlement agreement to prevent him from responding or punish him for responding;	H. Exhibit 1(P), Declaration of David Miscavige, executed February 8, 1994 and filed in Scientology v. Steven Fishman, supra, 31:22-32:14; Scientology's Request for Kudicial Notice, Exhibit A, second amended complaint, 19th cause of action, at 25:16-26:18; Scientology's motion for summary adjudication of 13th, 16th, 17th & 19th causes of action, at 9:9-10:4; Exhibit 1(E)(C), Scientology's Supplemental Memorandum in Support of Defendant's Motion to Dismiss Complaint with Prejudice, filed August 26, 1991 in Aznaran, supra, at 5:11-6:12, and declaration of Lynn R. Farny appended thereto, at pp 39-41; Scientology's evidence in support of motion for summary

	adjudication, Exhibit 1J, declaration of Gerald Armstrong executed September 3, 1991, and filed in Aznaran.
I. Attempting to have Armstrong jailed for contempt of court based on mischaracterization of his actions and manufactured actions;	I. Ex. 1(H)(DD), Scientology's Ex parte Application for Order to Show Cause Why Gerald Armstrong Should Note Be Held in Contempt, filed herein December 31, 1992; Exhibit 1(J) Declaration of Gerald Armstrong in Opposition to Motions for Summary Adjudication Fourth, Sixth and Eleventh Causes of Action of Second Amended Complaint, Authenticating Exhibits, 7:20-8:12; Ex. 1(J)(L); Exhibit 1(J)(M), "Why Thetans Mock Up," Scientology Bulletin by L. Ron Hubbard dated October 1, 1969, Bates stamped p. 700576; Plaintiff's Evidence, Exhibit 1EEEE, declaration of Gerald Armstrong, executed February 2, 1993.

J. Providing documentation to Premiere magazine about Armstrong, including partial transcripts of the illegal Ingram videotaping of Armstrong and then using the settlement agreement to punish Armstrong for responding;	J. Exhibit 1(Q), Article "Catch a Rising Star," by John H. Richardson in Premiere, September, 1993, p. 88; Scientology's motion for summary adjudication, at 8:18; Scientology's evidence, Exhibit 1GGG, letter from Gerald Armstrong to Premiere.
K. Providing a press release to the Marin Independent Journal concerning the Court's ruling of January 27, 1995, which discusses Armstrong's Scientology experiences and contains the false statement that he "promised [in the settlement agreement] to refrain from spreading falsehoods about [Scientology];" and then using the settlement agreement to punish Armstrong for responding;	K. Exhibit 1(T), Scientology press release from Nancy O'Meara and Andrew H. Wilson regarding January 27, 1995 ruling by Judge Gary W. Thomas granting summary adjudication; Scientology's motion for summary adjudication, at 14:22-15:5; Scientology's evidence, Exhibit 1IIII, letter from Gerald Armstrong to Nancy O'Meara.
L. Secretly videotaping him.	L. Ex. 1(E)(E), pp. 29-33, Letters of August 21 and August 22, 1991 to Scientology

	attorney Eric Lieberman.
108. Scientology has also continued to carry out fair game against its other perceived enemies, many of them Armstrong's friends and associates who include Ford Greene, Hana Whitfield, Dennis Erlich, Lawrence Wollersheim, Jonathan Atack, Margery Wakefield, Nancy McLean and Malcolm Nothling.	108. Ex. 1, 24:5-24; Ex. 10, 11:5-12:7; Ex. 9, 1:18-5:21; Ex. 9(B), in toto; Ex. 2, 1:12-27, 8:20-26, 6:21-12:18; Ex.2(A), 8:5-29:17, 38:4-41:7; Exhibit 3, Declaration of Dennis Erlich in Opposition to Motions for Summary Adjudication of 20th Cause of Action; and 13th, 16th, 17th & 19th Causes of Action of Second Amended Complaint, and Authenticating Exhibits, executed April 6, 1995, 3:9-19; Exhibit 4, Declaration of Margery Wakefield in Opposition to Motions for Summary Adjudication of 20th Cause of Action; and 13th, 16th, 17th & 19th Causes of Action of Second Amended Complaint, and Authenticating Exhibits, executed April 7, 1995, 3:25-3:17; Exhibit 4(B), Scientology's Motion for Order to Show Cause Why Plaintiff Should Not Be Held in Criminal

Contempt, filed February, 1993 in Wakefield v. Scientology, US District Court for the Middle District of Florida, Case no. 82-1313-Civ-T-10; Exhibit 5, Declaration of Keith Scott in Opposition to Motions for Summary Adjudication of 20th Cause of Action; and 13th, 16th, 17th & 19th Causes of Action of Second Amended Complaint, executed April 5, 1995, 3:6:15; Exhibit 6, Declaration of Malcolm Nothling in Opposition to Motions for Summary Adjudication of 20th Cause of Action; and 13th, 16th, 17th & 19th Causes of Action of Second Amended Complaint, and Authenticating Exhibits, executed April 2, 1995, 2:6-11, 2:17-21; Exhibit 6(A), Sworn Statement, pp 1,2, ¶¶ 3-7; Ex. 7, pp. 1-3, ¶¶ 6-12, p. 4, ¶ 16; Exhibit 7, § "General Report on Scientology - Declaration of Jonathan Caven-Atack," p. 1, ¶2, pp.

12-16, ¶¶68-90; Exhibit 7(A) Booklet "Total Freedom Trap: Scientology, Dianetics and L. Ron Hubbard, by Jon Atack, Theta Communications, Ltd., 1992, pp. 18,19, 28; Exhibit 7(B), Scientology Booklet "Anatomy of a Propagandist" Theta Communications International, undated. pp. 1-end; Exhibit 8, Declaration of Nancy McLean in Opposition to Motions for Summary Adjudication of 20th Cause of Action; and 13th, 16th, 17th & 19th Causes of Action of Second Amended Complaint, and Authenticating Exhibits, executed April 5, 1995, 1:17-3:6; Ex.1(L), pp. 1-5; Ex. 1(M), pp. 1-3.

ISSUE NO. III

Armstrong's Claim: The settlement agreement is unfair, unreasonable, unconscionable and cannot be specifically performed.

Armstrong incorporates herein his Disputed Facts, Additional Facts and Evidentiary Support Nos. 1A-E, 98-108, supra.

109. Scientology's interpretation of the settlement agreement is that it can say whatever it wants to anyone in any form at any time about Armstrong and that he has no right to respond.	109. Ex. 1, 15:1-3; Ex. 1(B)(F), Declaration of Lawrence Heller executed March 27, 1989 and filed in *Corydon*, *supra*.,34:26-35-13; Scientology's motions for summary adjudication of 20th cause of action, and 13th, 16th, 17th and 19th causes of action of second amended complaint filed herein.
110. Armstrong has been "fair game" since 1982.	110. Ex. 1(A)(A), 5:3-19; 7:9-12:9; Ex. 1(A)(A) Appendix, 13:4-15:3; Ex. 1(B), pp. 17, 18, ¶ 27; Ex. 1(C), at 920, 921, 925; Exhibit 1(I)(U), Deposition testimony herein July 11 and July 26, 1994 of Lynn Farny ("Farny") Secretary and corporate representative of plaintiff CSI, at 250:24-251:6; Ex. 1(I)(AA); Ex. 1(I)(BB); Ex. 1(I)(CC), "Suppressive Persons and Suppressive Groups List, Flag Executive Directive" dated July 25, 1992, (alphabetical list). Armstrong specifically

	repeats and includes herein his evidence in additional facts Nos. 105 and 107, supra.
111. Armstrong's cross-complaint against Scientology for fraud and years of fair game attacks was set in December, 1986 to go to trial in March, 1987.	111. Ex. 1(A) p. ¶ 1; Ex. 1(A)(A), 12:10-16; Exhibit 1(A)(B) Opinion of California Court of Appeal dated December 18, 1986 in Scientology v. Armstrong, Case No. B005912, at 13; Ex. 1(G), 11:7-10; Ex. 1(H), p. 18, ¶17.
112. Armstrong agreed, in exchange for monetary payment, Scientology's cessation of fair game against him and others and its release of him from all acts and claims, to dismiss his cross-complaint and release Scientology for all its acts and claims up to the date of settlement. Nowhere in the agreement does it state that Armstrong released Scientology from future acts, that Scientology may say or publish whatever it wants about him, nor that he	112. Plaintiff's Evidence, Exhibit A, p. 1-6, ¶¶ 1-6C; Ex. 1, 9:1-25; Ex. 1(B), p. 4, ¶9, p. 5, ¶11, pp. 17, 18, ¶¶ 27; Ex. 1(A)(D), declaration of Lawrence E. Heller, 8:27-9:16; Ex. 1(G), 9:25-10:4, 11:15-17; Ex. 1(S), and declaration thereto, 5:10-22.

waived any right to respond to any such statement.	
113. The settlement agreement, however, specifically states that Armstrong waived his right to respond in any appeal Scientology might take from the 1984 decision in his case by Judge Breckenridge.	113. Plaintiff's Evidence, Exhibit A, pp. 4,5, ¶¶ 4A, 4B.
114. In spite of that specific waiver, the Court of Appeal granted Armstrong's petition to respond, which was based in part on his assertion that being held by contract from not responding worked a fraud upon the Court.	114. Ex. 1(A)(P).
115. The Court of Appeal also granted Armstrong's petition to respond in the appeal Scientology had taken from the unsealing of the Armstrong court file, which petition was based in part on his assertion that being held by contract from not responding worked a	115. Ex. 1(A)(Q); Ex. B, and all exhibits thereto; Ex. C.

fraud upon the Court, and on the acts of fair game perpetrated against him by Scientology after the 1986 settlement.	
116. Flynn advised Armstrong that what Scientology was paying him for in the settlement was his dismissal of his cross-complaint and his release of Scientology for all its prior acts.	116. Ex. 1(B), p. 3, ¶7; Plaintiff's Evidence, Exhibit A, ¶¶ 1,4,5,6,8; Ex. 1(G), 8:28-9:5.
117. Armstrong never agreed to permit Scientology to continue fair game, to be himself a punching bag, or a willing victim, to be a tool of Scientology's obstruction of justice or its suppression of our brothers; and would never agree to such a condition for any amount of money.	117. Ex. 1, 14:28-15:10; Ex. 1(A), p. 7, ¶ 14, p. 22, ¶ 46; Ex. 1(B), pp. 17, 18, ¶27; Ex. 1(H), p. 18, ¶ 17.
118. Other people who understand Scientology's fair game philosophy and practices	118. Ex. 9, 4:4-5:13; Ex. 2, 17:13-26; Ex. 3, 3:20-4:8; Ex. 4, 3:9-17; Ex. 5, 1:21-3; Ex.

also view Scientology’s interpretation of the settlement agreement unconscionable.	6, 1:23-4:6; Ex, p. 3, ¶¶ 12-16.
119. Nancy McLean and Margery Wakefield, view the way Scientology is using the settlement agreements as so unconscionable that they have risked court orders and prison to continue to speak out against Scientology’s antisocial practices.	119. Ex. 1, 24:5-24; Ex. 4, 2:25-17; Ex. 4(B); Ex. 8, 2:22-25.
120. On December 23, 1991, at the hearing of a motion brought by Scientology in the original Armstrong case to enforce the settlement agreement, Los Angeles Superior Court Judge Bruce R. Geernaert, stated regarding the agreement: "So my belief is Judge Breckenridge, being a very careful judge....if he had been presented that whole agreement and if he had been	120. Exhibit 1(Y), Partial transcript of proceedings, December 23, 1991, in Scientology v. Armstrong, Los Angeles Superior Court No. C 420153, at 52:5:19.

asked to order its performance, he would have dug his feet in because that is one .... I'll say one of the most ambiguous, one-sided agreements I have ever read. And I would not have ordered the enforcement of hardly any of the terms if I had been asked to, even on the threat that, okay the case is not settled. ¶ I know we like to settle cases. But we don't like to settle cases and, in effect, prostrate the court system into making an order which is not fair or in the public interest."

121. On February 19, 1992, fifteen days after Scientology filed the instant case, Armstrong's attorney Ford Greene wrote to Scientology attorney Laurie Bartilson and requested that Scientology release Armstrong's attorneys Michael Flynn, Bruce Bunch and Julia Dragojevic from any	121. Exhibit 1(V), Letter from Ford Greene to Laurie Bartilson dated February 19, 1992.

contract by Scientology which prohibited them from providing Armstrong with a declaration or otherwise assisting him in this case.	
122. On February 24, 1992, Greene wrote to Bartilson and requested that Scientology release other settling parties, specifically, Nancy Dincalci, Kima Douglas, Michael Douglas, Robert Dardano, Warren Friske, William Franks, Laurel Sullivan, Edward Walters, Howard Schomer, Martin Samuels, Julie Christopherson, Nancy McLean, Tonja Burden, Gabe Cazares and Margery Wakefield, from any contract by Scientology which prohibited them from providing Armstrong with a declaration or otherwise assisting him in this case.	122. Exhibit 1(W), Letter from Ford Greene to Laurie Bartilson dated February 24, 1992.
123. On March 3, 1992 Bartilson wrote to Greene,	123. Exhibit 1(X), Letter from Laurie Bartilson to Ford

refusing to release Armstrong's attorneys or other settling parties. Scientology has refused throughout this litigation to release either Armstrong's attorneys or the settling parties from any contracts by which they are prohibited from assisting Armstrong.	Greene dated March 2, 1992.
124. Flynn recently told Armstrong that if he were free to do so he would testify that: Scientology prior to and during the time he was involved in litigation used the legal system and force against perceived critics and targeted "enemies" to eliminate ideas antithetical to its own; that this went under the heading "fair game," and included the concepts of "attack the attacker," and "black propaganda;" that Scientology swore to give up these practices and begged for	124. Ex. 1(S), 4:26-6:23.

a settlement as a means of obtaining an opportunity to prove that it had given up these practices; that, but for Scientology's promise that it was giving up all fair game practices, he would never have agreed to sign, nor had Armstrong or any other client agree to sign, Scientology's settlement documents; that the depth of his and Armstrong's principles and extent of dedication to the truth is manifested by the successful litigation of the case Scientology v. Armstrong, Los Angeles Superior Court No. C 420153; that intrinsic to the agreement was the recognition that the Armstrong cross-complaint was about to go to trial, that Scientology had substantial liability therein, and that there had been a verdict of $30,000,000 against Scientology in the case of Wollersheim v. Scientology, also in LA Superior Court within less than five months of the December, 1986 settlement; that he was the subject of fair game from 1979 through 1986, had been sued fifteen times by Scientology, had been harassed unmercifully, framed, threatened, his marriage ruined and his family and career threatened, and that he was desperate to get out of the fair game threat; that there were no negotiations concerning the liquidated damages condition of the settlement agreement; that there were no negotiations involving Armstrong; that he believed that, despite Scientology's refusal to not include the condition, it was and is unenforceable, and told Armstrong so at the time; that there is no reasonable relationship between Scientology's actual damages and the liquidated damages; that the bargaining power of

the parties was completely lopsided in Scientology's favor; that there was supposed to be a "clean slate," after the settlement; and, that if Scientology published anything about Armstrong after the settlement Armstrong was not prohibited from responding to such post-settlement statements.	
125. On April 6, 1995, Armstrong applied to Judge Gary W. Thomas ex parte for an order releasing Flynn from the contract by which Scientology prohibited him from helping Armstrong. Scientology opposed Armstrong's application and Judge Thomas denied it.	125. Ex. 1(S).

ISSUE IV

Armstrong's Claim: Scientology's hands are unclean in this transaction and Scientology is therefore barred from obtaining the relief it seeks.

Armstrong incorporates herein his Disputed Facts, Additional Facts and Evidentiary Support Nos. 1A-E, 98-125, supra.

126. In his decision after the 1984 trial in the Armstrong case Judge Breckenridge ruled that Scientology did not have "clean hands," with respect to Armstrong as a result of its "suppressive person" declares and the fair game actions which followed.	126. Ex. 1(A), 1:25-28.
127. This decision was affirmed in its totality by the Court of Appeal in 1991, which also noted that the "declares" subjected Armstrong to,the "Fair Game Doctrine," "which permits a suppressive person to be "tricked, sued or lied to or destroyed...[or] deprived of property or injured by any means by any Scientologist."	127. Ex. 1(C).
128. Following the Breckenridge decision, Scientology continued to subject Armstrong to fair game.	128. Ex. 1, 5:5-6:19; Ex. 1(G), 6:13-7:7; Ex. 1(G)(M); Ex. 1(G)(N); Ex. 1(G)(0); Ex. 1(B), p. 1, ¶ 2; Ex. 1(B)(O), 3:15-8:16; Ex. 1(B)(P), 6:4-11:12.

129. Scientology subjected Armstrong's attorney Michael Flynn to fair game.	129. Ex. 1, 6:20-7:7; Ex. 1(G), 9:6-24; Ex. 1(B), p. 1, ¶ 2, pp. 3,4,5 ¶8, ¶11; Ex. 1(B)(O), pp. 60-74; Ex. 1(H), pp. 8,9, ¶ 12; Exhibit 7, p. 4, ¶16; Ex. 1(G)(L), pp. 4,5, (5); Ex. 1(G)(M); Ex. 1(G)(N); Ex. 1(G)(O).
130. Scientology promised to discontinue fair game against Armstrong and others as an inducement for settlement; then reneged on that promise and have continued fair game against Armstrong since the settlement.	130. Ex. 1, 9:1-15; Ex. 1(B), p. 4, ¶9, p. 5, ¶11, pp. 17, 18, ¶¶ 27; Ex. 1(G), 9:25-10:4, 11:15-17; Exhibit 1(S), 5:10-22. Armstrong specifically repeats and includes herein his evidence in additional facts Nos. 105 and 107, supra.
131. Prior to Armstrong speaking publicly about his experiences in Scientology, Scientology engaged him in public controversy by publishing and disseminating its own versions of his experiences, and has continued thereafter to publish and disseminate its versions of	131. Armstrong specifically repeats and includes herein his evidence in additional facts Nos. 105 and 107, supra.

his experiences.

ISSUE V

Armstrong's Claim: The settlement agreement and Scientology's enforcement thereof are obstructive of justice.

Armstrong incorporates herein his Disputed Facts, Additional Facts and Evidentiary Support Nos. 1A-E, 98-131, supra.

132. Scientology claims that by the settlement it was free to comment upon Armstrong's statements, and that Armstrong could not respond to Scientology's post-settlement comments.	132. Ex. 1, 15:1-3; Ex. 1(B)(F), 34:26-35-13; Scientology's motions for summary adjudication of 20th cause of action, and 13th, 16th, 17th and 19th causes of action of second amended complaint filed herein.
133. Scientology characterized Armstrong's statements, which it claims it is free to comment on, as "often bizarre allegations."	133. Ex. 1(B)(E), Scientology's Opposition of Defendants to Motion for an Order Directing Non-Interference with Witnesses and Disqualification of Counsel, filed March 27, 1990 in Corydon, supra, 14:25-15:1.
134. Lawrence Heller testified that "[a]t the time of the	134. Ex. 1(B)(F), 35:2-4.

Armstrong settlement, information from Mr. Armstrong was being used in a number of cases around the world."	
135. Scientology staff member Kenneth Long stated in a declaration executed January 19, 1995 that prior to December, 1986, Armstrong had testified in 15 cases a total of 28 trial days, had been deposed for 19 days, and had executed 28 declarations in 15 cases all of which concerned Scientology and its related entities.	135. Exhibit 1(BB), Declaration of Kenneth D. Long in support of plaintiff’s reply in support of motion for summary adjudication of the fourth, sixth and eleventh causes of action of plaintiff’s second amended complaint, filed herein January 20 1995, 1:24-28.
136. In the same declaration Long describes Armstrong as, inter alia, "an anti-Church litigant and a professional witness against the Church in other litigation" and "a paralegal who worked extensively on anti-Church cases."	136. Ex. 1(BB), 1:20:22.
137. In Armstrong’s expert	137. Ex. 1, 15:10-20.

opinion, "[t]he whole set of "settlement agreements," which are commonly known as the "Flynn agreements," are unfair to anyone who litigates either as a defendant or plaintiff against Scientology, since these agreements remove knowledgeable witnesses from the legal arena and drive up litigation costs. The "agreements" are also unfair to the public because they allow Scientology's leaders to rewrite history, lie about judicially credited information, attack the sources of that information without response, and convey the idea that it is futile to speak the truth or oppose their tyranny. These "agreements" obstruct justice."

ISSUE VI

Armstrong's Claim: All of Armstrong's experiences concerning which Scientology seeks to silence him are religious in nature and the silencing of the expression of such experiences by court order

is completely barred by the First Amendment to the United States Constitution.

Armstrong incorporates herein his Disputed Facts, Additional Facts and Evidentiary Support Nos. 1A-E, 98-137, supra.

138. Scientology claims to be a religion.	138. Plaintiff's Evidence: Request for Judicial Notice, Exhibit A, face. All papers filed by Scientology herein.
139. Scientology claims in its By-Laws to be "an association of persons having incorporated exclusively for religious purposes under the laws of the State of California as the same relate to Nonprofit Religious Corporations."	139. Exhibit 1(CC), Revised By-Laws of Church of Scientology International. p. 1, preamble.
140. In its By-Laws Scientology defines "Religion of Scientology" and "Scientology" as "the religious doctrines, beliefs, tenets, practices, applied religious philosophy and technology for its application as developed by L. Ron Hubbard and as the same may hereafter	140. Ex. 1(CC), p. 3, ¶ c.

be developed by L. Ron Hubbard."	
141. In its By-Laws Scientology defines "Scriptures" as "the writings and recorded spoken words of L. Ron Hubbard with respect to Scientology and organizations formed for the purposes thereof."	141. Ex. 1(CC), p. 3, ¶ d.
142. Scientology's By-Laws state that the purposes of "a Church of Scientology:" "The corporation shall espouse, present, propagate, practice, ensure and maintain the purity and integrity of, the religion of Scientology, as the same has been developed and may further be developed by L. Ron Hubbard."	142. Ex. 1(CC), p. 4, Article III.
143. Scientology's By-Laws state that the purposes of its "religious orders" shall be the carrying out of the religious and administrative	143. Ex. 1(CC), p. 28, § 3.

activities of [Scientology]," the "supervision of ecclesiastical affairs of other churches of Scientology."	
144. Armstrong was a member of Scientology's "religious order," the Sea Organization, members of which sign a billion year contract, from 1971 through 1981, the period of almost all of his significant experiences about which Scientology seeks to silence him.	144. Ex. 1, 27:23-27.
145. Armstrong believes that his experiences in Scientology are religious, indeed sacred, because they were created and motivated by God for His Glory.	145. Ex. 1, 27:10-13.
146. Armstrong believes that through God's Grace and Wisdom he came to see that the faith he put in Hubbard, and in his philosophy, mental "science"	146. Ex. 1, 2:28-3:23.

and organizational policies, throughout his Scientology years was misplaced. He came to see that despite that misplaced faith, God never deserted him, that God was with him, keeping him safe every moment. Armstrong believes that throughout his Scientology years, through abuse, danger, and betrayal, He kept his heart from being hardened beyond salvation. Armstrong believes that God kept him from being completely taken over by Scientology through all the years of indoctrination, mind control, "ethics," threat and punishment, and through the more than a thousand hours of "auditing." Armstrong believes that when Hubbard assigned him twice to the Rehabilitation Project Force (RPF), Scientology's prison, for a total of twenty-five months, when Hubbard had his messengers order Armstrong's wife to leave him, when he was ordered security checked for questioning Hubbard's truthfulness, God brought him through safely, made him stronger and wiser, and kept his heart from hardening. Armstrong believes that he was so deeply involved with Scientology, so devoted to an ungodly man and his ungodly teaching, only God's Own leading him, through His mysterious way, could have saved him. Armstrong believes that God led him into the Hubbard archive and biography project, brought him to study the Hubbard's secret papers and document his duplicity, and freed Armstrong's faith from Scientology, on which it had been misplaced.

147. Armstrong believes that in his post-Scientology period, when first in the outside world, confused and afraid, God took him in His	147. Ex. 1, 4:5-5:1.

Hands for particular care and teaching. Armstrong believes that when Scientology's leaders sent hired private investigators to spy on him and his wife, and to terrorize them, God kept him, emotionally intact. Armstrong believes that at the first hearing in his case in 1982, God somehow put into his hands a tiny tract of Bible quotes which he held and put his heart on as fear gripped at him. Throughout the 1984 trial, where Armstrong was on the stand for about ten days, he depended on the Twenty-third Psalm to calm his mind and heart.

148. Armstrong believes that for His Purposes God allowed him to be terrorized by Scientology agents, his car broken into, his drawings and writings stolen, other writings and ideas of his perverted and held up to	148. Ex. 1, 5:14-6:1.

ridicule. Armstrong believes that God allowed Scientology's leaders to become intoxicated by their own lies so that they would try time after time to have Armstrong jailed on their false and manufactured criminal charges. Armstrong believes that God allowed the self-deception of Scientology's leaders, so that they concocted a perverse intelligence scheme to entrap Armstrong in a crime and have him prosecuted. Armstrong believes that God allowed Scientology's leaders to put their faith in a base private investigator, Eugene Ingram, whom they would use to illegally videotape Armstrong, and who threatened to put a bullet between Armstrong's eyes. Armstrong believes that God allowed the heart of an Los Angeles Police Department Officer, Philip Rodriguez, to be tempted by greed, and paid for a false authorization to

Scientology to illegally videotape Armstrong. Armstrong believes that God allowed Armstrong's friend Dan Sherman to use their friendship to betray Armstrong, to lead him with kind words into danger, to set him up, to trick from him his thoughts and writings, and to break his heart.	
149. Armstrong believes that God allowed Scientology's leaders to attack Michael Flynn, Armstrong's attorney, good friend, benefactor and champion in the legal battle. Armstrong believes that God allowed Scientology to sue Flynn some fifteen times, to threaten him, his family and career, to frame him with forgery, to pay known criminals to bear false witness against him, and to attempt his assassination. Armstrong believes that God allowed Scientology's leaders	149. Ex. 1, 6:20-7:3.

to think they could destroy Flynn with their "black propaganda," "dead agent" packs, "noisy investigations," and the compromise and turning of other clients. Scientology worked for seven years to achieve this destruction. Armstrong believes that God brought him to Flynn, and Flynn to Armstrong, and brought them to fight alongside each other in a legal and spiritual battle against the threat and evil of Hubbard and his organization from 1982 through 1986.	
150. Armstrong believes that during the years of the Scientology battle he was brought by God ever closer to Him. Armstrong believes that when he was alone, at times in terrible fear, God kept him safe, and allowed his heart to break, over and over. Armstrong believes that God spoke to him, and that at	150. Ex. 1, 7:8:15.

times, as early as 1983, he wrote God's Words under His guidance in what seemed to be dialogues. Armstrong believes that God gave him the idea for the true protection of His Children in this world, and moved Armstrong in 1986 to found a church based on this concept for His Glory.

151. Armstrong believes that, at a time when Scientology faced tremendous exposure and liability in Armstrong's cross-complaint for years of outrageous fair game attacks, and had just suffered a $30,000,000 verdict in the case of Lawrence Wollersheim v. Scientology, Los Angeles Superior Court No. C 332027, God, for His Glory, allowed Flynn to lose heart. Flynn "negotiated" a deal with Scientology which involved getting his clients to agree to the organization's demanded contractual condition of

151. Ex. 1, 7:24-8:13.

silence about their "experiences," while not demanding the same protection for his clients. Many of these clients had been the target of Scientology's "black propaganda" campaigns. He also agreed to get his clients to agree to a "liquidated damages" penalty of $50,000 per comment about their experiences. Flynn did this while believing, and having ample experience to justify believing, that the settlement agreements were evil, as was the entity which was insisting on the "agreements" being signed as a condition of settlement. Flynn knew Scientology's word was not to be trusted, yet he conveyed and gave support to Scientology's "promise" that it was going to discontinue fair game.

152. Armstrong believes that God allowed Scientology to	152. Ex. 1, 8:14-28.

harass, threaten and compromise Flynn, and allowed Flynn to be persecuted and compromised, for His Purpose to His Own Glory. Armstrong believes that God allowed Flynn to state to Armstrong, when Armstrong protested the impossibility of the settlement agreement and the insanity of the liquidated damages clause, "Gerry, it's not worth the paper it's printed on. It's unenforceable. You can't contract away your Constitutional rights." Armstrong believes that God allowed Flynn to point out to Armstrong his release of Scientology and Armstrong's dismissal of his lawsuit, and allowed Flynn to say, "That's what they're paying you for."	
153. Armstrong believes that God made him aware of His Spirit during the "settlement" when he was rejected from Mike	153. Ex. 1, 9:16-25.

Flynn's heart. Armstrong believes that God showed him a glimpse of the future at that moment; that he might be left alone, that he might be persecuted, but that he should not fear; and that he should at that time give everyone involved what they wanted, what they thought they needed to be free. Because of Flynn's promise of the agreement's unenforceability, Armstrong's desire to end the threat if possible for everyone, Scientology's promise to end fair game, and what he believed was God's Assurance, Armstrong did sign.

154. Armstrong believes that after the "settlement," God gave him a time of some quiet and joy to write, draw, get strong after years of deteriorating health, to hang out with friends, and to be drawn ever closer to Him. Armstrong believes that in

154. Ex. 1, 9:26-10:11; Ex. 1(H), p. 38, ¶ 28, pp. 39-41, ¶ 30; Exhibit 1(H)(X), Advertisements by Gerald Armstrong in "Common Ground," in 1989; Exhibit 1(H)(R)(CC), Letter from Gerald Armstrong to Jonathan Marshall dated July 28, 1987; letter from

1987 God chose him and came to him in the undeniable Physical Substance of His Love, and gave Armstrong a greater view of his future role in God's Plan. Armstrong believes that in 1988 God brought him to offer his life in exchange for the captives then held in Lebanon. Armstrong believes that God schooled him in the understanding of His Nature and set Armstrong on the path to become by 1989 one of His Teachers. Armstrong believes that in 1989 God also gave him an understanding of the valuelessness of money, and a glimpse of God's solution for the grinding cruelty of the world's economic system. Armstrong believes that God brought to him a glory of four-leaf clovers. Armstrong believes that God showed Armstrong that through his life God could bring to the world the mathematical proof of His guidance. Armstrong

Gerald Armstrong to "Dear Captors" dated July 28, 1987; Exhibit 1(H)(R)(DD), Writing by Gerald Armstrong dated December 31, 1987; 1(H)(R)(EE),"Margaret," drawing by Gerald Armstrong; 1(H)(R)(FF),"Mitzi," drawing by Gerald Armstrong; Exhibit 1(H)(S), Letter from Gerald Armstrong to Jonathan Marshall dated October 14, 1989 with article "A Crash Course in Speculation."

believes that God moved him to run like the wind, and to pick up the world's trash, all for His Glory.

155. Armstrong believes that during the post-settlement years, God also allowed the hearts of Scientology's leaders to grow ever harder and to manifest in attack after attack on Armstrong's character and credibility. It became clear, and saddened Armstrong greatly, that these leaders had not stopped "fair game," but were using the cessation of the litigation by Flynn and his clients as an opportunity to continue their antisocial practices unchecked. Armstrong believes that God allowed his heart to be broken by each attack and the daily knowledge that Scientology had not ceased fair game, yet God kept Armstrong from responding with anything other than sadness

155. Ex. 1, 10:12-11:20.

for almost three years. Then, in the fall of 1989, Armstrong was served with a deposition subpoena by the attorney for Bent Corydon in the case of Corydon v. Scientology, Los Angeles Superior Court No. C694401. Following this Armstrong received a series of calls from Scientology attorney Lawrence Heller who threatened that, even pursuant to this subpoena, if Armstrong testified about his knowledge of Hubbard and Scientology he would be sued. Armstrong was deeply troubled by Heller's threats, the idea of succumbing to those threats, and the injustice and evil the settlement agreements had spawned. Armstrong believes that God brought him at that time to a determination to do what he could to bring to light and correct that injustice and evil. When Armstrong began to research his rights, responsibilities and how to proceed, he learned that through the intervening five years Scientology had been able to maintain an appeal, Scientology v. Armstrong, No. B025920, from the 1984 Breckenridge decision, and Armstrong's first actions concerned that appeal.

156. Around March 12 and continuing for about two weeks Armstrong experienced what he believes was both his spiritual death and his rebirth, brought on him by God. Armstrong believes that God showed him the nature of the evil that he had been chosen by God to oppose, and God showed him the spiritual battle with that evil. Armstrong believes that God showed him that persecution must be endured for His Cause, and God assured Armstrong that He would never leave him. God showed Armstrong the souls he	156. Ex. 1, 24:25-25:14.

fought for, and why God chose him to fight through all those years. Armstrong believes that God brought him to surrender his battle to Him that His Will be done, for unless God does it Armstrong hasn't got a prayer. Armstrong believes that he will run whatever race God calls him to run as fast and as far as God moves him. Armstrong believes that sometimes God will appear to lose the race on earth to win it in Heaven.

ISSUE VII

Armstrong's Claim: All of Armstrong's activities which Scientology claims are violations of the subject agreement are religiously motivated and completely protected by the First Amendment, and the Religious Freedom Restoration Act of 1993.

Armstrong incorporates herein his Disputed Facts, Additional Facts and Evidentiary Support Nos. 1A-E, 98-156, supra.

157. Armstrong is a Christian.	157. Ex. 1, 1:22, 1:23-30:31; Ex. 1(H), pp. 30-32, ¶ 25, p. 42, ¶ 33, pp. 52, ¶ 43; Ex. 1(J), 1:18-28, 3:14-27; Ex.

	1(J)(C), Declaration of Michael Rinder executed October 27, 1994, and filed in Scientology v. Steven Fishman & Uwe Geertz, US District Court for the Central District of California No. 91-6426-HLH (Tx), at 11:9-11; Scientology's Evidence, Ex. 1Q, letter of Gerald Armstrong dated December 22, 1992, at p. 9; Scientology's Evidence, Ex. 1O, letter of Gerald Armstrong dated June 21, 1991; Scientology's Evidence, Ex. 1N, Declaration of Gerald Armstrong executed July, 1991, at pp. 7-9, ¶¶ 6,7.
158. Armstrong believes that his life, in every moment and breath, is God's and in God's Hands. Armstrong believes that he has been saved from eternal separation and hell to become a son of God by God's Grace alone, and drawn by God to trust and follow His Son Jesus Christ as his Lord and	158. Ex. 1, 1:24-2:4.

Savior. Armstrong believes he has been filled with God's Holy Spirit, and given by Him all peace, wisdom and love. Armstrong believes that he has been saved for God's Purposes to His Glory. Armstrong believes that God's Purpose for him and all the world is salvation. Armstrong believes that the only difference of any meaning at any time between him and anyone else on earth is this belief in God's Plan for salvation.

159. Armstrong believes that as a Christian and as a son of God he has been led and will be led into all of his life's situations and to all of the people he has encountered and will encounter for God's Purposes alone. Armstrong believes that from God come all things, including the trust in Him, the willingness to believe on Him, free will, peace, wisdom and love.	159. Ex. 1, 2:5-10.

160. Scientology professes in its public promotions and publications to be compatible with Christianity.	160. Ex. 1, 2:22-28, 25:15-23; Ex. 2, 12:23-13:15, 15:5-8; Ex. 5, 2:4-8; Ex. 6, 3:17-20.
161. Scientology states in its "catechism," published in 1992 in its promotional book *What is Scientology?*, "Scientologists hold the Bible as a holy work and have no argument with the Christian belief that Jesus Christ was the Savior of Mankind and the Son of God...¶There are probably many types of redemption. That of Christ was to heaven."	161. Ex. 1, 25:16-23.
162. In fact, however, Scientology is anti-Christian.	162. Ex. 1, 25:15-26:24; Ex. 1(J), 2:1-23; Ex. 2, 13:16-16:21; Ex. 3, 1:19-2:16; Ex. 4, 1:19-2:10; Ex. 4(A); Ex. 6, 3:20-4:2.

163. Once initiated into Scientology, people are secretly taught, and must believe, that Christ, God and Heaven are false ideas "implanted" in humans by electronic means to enslave them.	163. Ex. 1, 25:24-26:24; Ex. 2, 13:16-16:21; Ex. 2(B), "Routine 3 Heaven" Scientology Bulletin by L. Ron Hubbard dated May 11, 1963; Ex. 2(C), "Resistive Cases Former Therapy" Scientology Bulletin by L. Ron Hubbard dated September 23, 1968; Ex. 3, 1:19-2:15; Ex. 3(A); Ex. 3(B); Ex. 4(A); Ex. 1(J)(A), "Operating Thetan Section III," by L. Ron Hubbard (Handwritten and Typed Versions) at Bates stamped pages 700684, 700707.
164. Scientology secretly teaches its initiated adherents that its "auditing" procedures are the only way to free mankind from "Christian" slavery and the "Creator of Heaven."	164. Ex. 1, 25:24-26:24; Ex. 2, 13:16-16:21; Ex. 2(B); Ex. 2(C); Ex. 3, 1:19-2:15; Ex. 3(A); Ex. 3(B); Ex. 4(A).
165. The main target of Scientology's promotion and marketing are Christians. The largest percentage of	165. Ex. 1, 26:2-8.

Scientology's members come from Christian backgrounds. The second largest percentage comes from Judaism.	
166. Scientology enforces the acceptance of its teachings that Christ, God and Heaven are false "implanted" ideas with Scientology's system of "ethics" punishments, its "auditing procedures," and its institutionalized mockery of God and Christ. Anyone in Scientology who professed a belief in Christ, or God, or who sought help through prayer, was viewed and handled as a "psychotic."	166. Ex. 1, 26:8-24; Ex. 2, 15:4-11; Ex. 3, 2:5-16.
167. Jesus states at Mark 3:28,29: "28 Verily I say unto you. All sins shall be forgiven unto the sons of men, and blasphemies wherewith soever	167. Ex. 1, 26:25-27:5.

they shall blaspheme: 29 But he that shall blaspheme against the Holy Ghost hath never forgiveness, but is in danger of eternal damnation."	
168. Armstrong believes that when Hubbard asserts that Christ and God are "implants," he blasphemes the Holy Spirit, the one unforgivable sin.	168. Ex. 1, 27:6-8.
169. Armstrong believes that people drawn into Scientology and brought to adopt this blasphemy are in grave spiritual danger.	169. Ex. 1, 27:8-9.
170. Armstrong believes that Scientology is the clever human invention of a clever human who took his human cleverness as far as it would go for his own glorification. Armstrong believes that God	170. Ex. 1, 3:24-4:7.

used Armstrong to accomplish part of God's Plan for Scientology, Scientologists and salvation. Armstrong believes that it took someone with a God-given history, character and skills such as He gave Armstrong to bring out of Scientology, to the light, and to the minds and hearts of all those whom God sent to listen, a testimony of the character of Scientology's product and "source." Armstrong believes that God continues to use him to reflect the unworthiness and bankruptcy of Hubbard's attempt to create his own salvation plan, against the infallibility and peaceful grandeur of God's Plan.

171. Margery Wakefield, who also signed a "Flynn agreement," believes that she is saved by the Grace of God through her faith in His Son Jesus Christ. She believes

171. Ex. 4, 1:19-2:24.

that she was called to speak out concerning the illegal practices of Scientology, its mind control techniques, and its anti-Christian nature and teachings. Ms. Wakefield recently wrote an essay entitled "What Christians Need To Know About Scientology." She has been motivated in speaking her thoughts based on her knowledge and experiences by the desire to reach the minds of people who are in Scientology and held by its anti-Christian mind control and pseudo-scientific dogma, and the minds of people who might be drawn into Scientology by its misrepresentations concerning its intentions, practices and religion. She believes that it is every Christian's motivation and desire to reach the unsaved with the message of the true gospel and a warning about false teachers like L. Ron Hubbard and false gospels like Scientology. She has felt that the right to speak and teach in this way is something that no court in this country should nor can take away. Ms. Wakefield believes that under the US Constitution she is free to speak and cannot contract away her right to speak about those Scientology's "religious" scriptures, practices and experiences. She believes that what she experienced in Scientology was her own religious experiences, and what she experienced regarding Scientology after leaving are her own religious experiences, about which she cannot be silenced.

172. Keith Scott has a Christian ministry called the Cults Awareness Ministry. A vital aspect of his ministry is to offer advice born of experience to people who are going in or thinking about	172. Ex. 5, 1:12-2:16.

coming out of Scientology. He does this work from a Christian perspective, using the strength and truths he has gained through his faith in Jesus Christ as his Lord and Savior. Mr. Scott exposes the untruths of Scientology and explains the dangers to the spiritual well-being and future of people who follow those untruths rather than the truths of the Word of God. Mr. Scott believes that he was saved from the manipulation and mind control of Scientology by the Grace of God recognized through his faith in His Son, Jesus Christ.	
173. Other knowledgeable people use the information about Hubbard, his philosophy and practices which Armstrong brought to the light, to educate and free the misinformed.	173. Ex. 2, 8:27-9:20; pp. 8,9, ¶¶ 14,15; Ex. 3, 3:20-4:8; Ex. 5, 1:4-2:4; Ex. 6, 4:3-6; Ex. 7, pp. 1,3, ¶¶ 6,13; Ex. 9, 4:4-5:13.

174. Armstrong believes that as Christ taught, and as a child of God, Armstrong's practice is forgiveness. Armstrong believes that as all that he has done has by Christ been forgiven, Armstrong has forgiven everything anyone has ever done to me, every act or thought of persecution. Armstrong believes that what he cannot forgive, however, for he has not the power to forgive it, is Hubbard's, Scientology's leaders' Scientologist's and anyone else's blasphemy of God's Holy Spirit.	174. Ex. 1, 29:13-19.
175. Armstrong believes that Scientologists will not recognize their need for forgiveness as long as they blaspheme the Holy Spirit, and they will persecute Armstrong as long as they commit and promote this blasphemy. Armstrong asks them to stop. Armstrong believes that when	175. Ex.1, 29:20-30:23.

Scientology persecutes the "little ones," those who are the least among us, those whom Scientology's leaders call "suppressive persons," "PTSes" or "degraded beings" Scientology persecutes Christ Himself. Armstrong asks them to stop this practice as well. Armstrong believes that God for His Purposes chose Armstrong to be persecuted; and to care and hurt when the little ones are persecuted. Armstrong cares what Scientology does to him because he believes Scientology is doing it and will do it to anyone else. Armstrong believes that is to all of these who are persecuted, and to all those in Scientology, that God has sent him. Armstrong believes that we are in the end times, and that God has sent His messengers, teachers and prophets onto His Elect, wherever they are, in whatever country, city, prison, church or cult, to gather them onto Himself. Armstrong believes that God chose him to be persecuted by Scientology's leaders, using their organization's tax-exempt millions, and in violation of the nation's Constitution, as Apostles of old were persecuted, and all God's Disciples have been persecuted throughout history. Armstrong believes that this need not be, for persecution can end in no time and without downside. Armstrong believes, nevertheless, God allows and uses the persecution of His Children, His Messengers, Teachers and Prophets to prove His great Mercy and Love and the power of His marvelous plan of salvation, both for the persecutors and those persecuted. Armstrong believes that God knows which souls He will reach through Armstrong's words, story and persecution. Armstrong believes that they may be few; nevertheless, God desires that all should be saved.

Dated: November 17, 1995 Respectfully submitted,

HUB LAW OFFICES

By:

FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

ARMSTRONG'S SEPARATE STATEMENT OF DISPUTED AND UNDISPUTED FACTS IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION ON FIRST CAUSE OF ACTION OF ARMSTRONG'S CROSS-COMPLAINT

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON,ESQ. BY FAX
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028

[ ] (Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee.

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: November 17, 1995

ORIGINAL

Law Offices
HUB LAW OFFICES
711 Sir Francis Drake Boulevard
San Anselmo, California 94960
(415) 258-0360

FORD GREENE, Bar # 107601

Attorney for Defendant
GERALD ARMSTRONG

(SPACE BELOW PROVIDED FOR FILING STAMP ONLY)

9349

FILED
NOV 17 1995
HOWARD HANSON
MARIN COUNTY CLERK
By ______ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION, a California for-profit corporation; DOES 1 through 100, inclusive, Defendants.	No. 157 680 ARMSTRONG'S OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION ON FIRST CAUSE OF ACTION OF ARMSTRONG'S FIRST AMENDED CROSS-COMPLAINT POINTS AND AUTHORITIES; REQUEST FOR JUDICIAL NOTICE Date: 12/1/95 Time: 9:00 a.m. Dept: One

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION

I. INTRODUCTION

Summary adjudication of Armstrong's cross-complaint for declaratory relief is inappropriate beause cross-defendants fail to address whether the settlement agreement violate Armstrong's right under the Speech and Religion Clauses of the First Amendment. The Court has not ruled on Armstrong's defense based on First Amendmet religious liberty principles. Since that is ignored by Scientoogy, summary adjdication canot be granted. (C.C.P. § 437c (o)(2).) As a substantive matter, the settlement agreement violates public policy and the First Amendment.

The specific allegations of the cross-complaint for declaratory relief state as follows:

> 59. Cross-complainant ARMSTRONG realleges paragraphs 1 through 58, inclusive, and incorporates them by reference herein as though fully set forth.
>
> 60. An actual controversy has arisen and now exists between ARMSTRONG and CSI concerning their respective rights and duties in that ARMSTRONG contends that the only provisions of the settlement agreement that have any legal force any effect were those whereby he dismissed his cross-complaint in Armstrong I in consideration for a sum of money, and that paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 7I, 10, 18D, 18E of the settlement agreement are void as against public policy and should be severed therefrom, and that CSI and its agents are not entitled to breach the settlement agreement while requiring ARMSTRONG to adhere thereto, whereas CSI disputes this contention and contends that it is entitled to enforce all provisions of the settlement agreement against ARMSTRONG notwithstanding the lack of mutuality thereof.
>
> 61. ARMSTRONG desires a judicial determination of his rights and duties, and a declaration that the only provisions of the settlement agreement which are valid are those which directly pertain to the dismissal of his cross-complaint in Armstrong I in consideration for the payment of a sum of money, and that paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 7I, 10, 18D, 18E of the settlement agreement should be severed and held not to be legally enforceable because they were designed to suppress evidence and obstruct justice.
>
> 62. A judicial declaration is necessary and appropriate at this time under the circumstances in order that ARMSTRONG may ascertain his rights and duties under the settlement agreement.
>
> 63. ARMSTRONG is being harmed by the settlement agreement insofar as his First Amendment Rights are curtailed, his ability to freely pursue gainful employment is restricted, and his reputation is being attacked in judicial proceedings which he is unable to counter without risking violation of the settlement agreement.

(Scientology's Request for Judicial Notice, (G).)

II. STATEMENT OF FACTS

In the initial litigation between Armstrong and Scientology, Judge Paul G. Breckenridge, Jr., specifically found the Scientology organization to be malevolent, in part because the organization "or its minions is fully capable of intimidation [of witnesses, including Armstrong] or other physical or psychological abuse if it suits their ends." (Armstrong's Separate Statement at ¶ 1 (A), Ex. 1 (A) at 8:3-6.) [1] He further provided the following factual findings, inter alia, regarding Scientology:

> In 1970 a police agency of the French Government conducted an investigation into Scientology and concluded "this sect, under the pretext of 'freeing humans' is nothing in reality but a vast enterprise to extract a maximum amount of money from its adepts by (use of) pseudo-scientific theories, by (use of) 'auditions' and 'stage settings' (lit. to create a theatrical scene') pushed to extremes (a machine to detect lies, its own particular phraseology . .), to estrange adepts from their families and to exercise a kind of blackmail against persons who do not wish to continue with this sect." [footnote omitted] From the evidence presented to this court in 1984, at the very least, similar conclusions can be drawn.
>
> In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization is clearly schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH [L. Ron Hubbard]. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile.

Id. at 8:7-9:4. (Emphasis added.)

In contrast to his findings regarding Scientology, Judge Breckenridge found Armstrong and his witnesses to be credible and sympathetic. He wrote:

> As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Homer Schomer to be credible, extremely persuasive and the defense of privilege or justification established and corroborated by this evidence . . . In all critical and important matters, their testimony was precise, accurate, and rang true. The picture painted by these former dedicated Scientologists, all of whom were intimately involved [with the highest echelons of power in] the Scientology Organization, is on one hand pathetic, and on the other, outrageous. Each of these persons literally gave years of his or her respective life in support of a man, LRH [L. Ron. Hubbard], and his ideas. Each has manifested a waste and loss or frustration which is incapable of description.

Id. at 7:9-26. (Emphasis added.)

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[1] Rather than unnecessarily burden the Court's file with repetitive filings, the evidence referred to in Armstrong's Separate Statement herein will not be refiled. Rather, Armstrong relies on the evidence that he submitted in opposition to Scientology's motion for summary adjudication of the twentieth causes of action. There is additional evidence with respect to Scientology's so-called "Upper Level" materials referred to in Armstrong's Separate Statement herein that the Court previously struck as irrelevant. Due to the Court having previously ordered said material stricken, it is submitted again with this opposition.

Since the scope of the settlement agreements' gag provisions specifically included Nancy Dincalci (now Nancy Rodes), Kima Douglas, Laurel Sullivan, and Howard Schomer. (Scientology's Exhibit 1 (B)), it becomes clear that Scientology was seeking to buy its way out of the conclusion that Judge Breckenridge had rendered with respect to its nature and credibility, and to eliminate such persons from ready availability as witnesses in future litigation. The nature of the settlement agreement is further clarified by looking at its requirements that Armstrong forbear from participating in Scientology's appeal of Judge Breckenridge's opinion (Scientology's Exhibit 1 (A) at ¶ 4-B), assist in its effort to obtain return of documents in *United States v. Zolin,* [2] and in, furtherance of the gag provisions, to avoid service of process. (Scientology's Exhibit 1 (A) at ¶ 7H.)

Scientology attorney Lawrence Heller, who is the representative of Scientology depicted on the videotape of Armstrong's signing of the agreement, advised one court in 1989 in a motion to quash a deposition subpena served on Gerald Armstrong (that was based on the agreement) that he "was personally involved in the [1986] settlement" and stated under oath "The non-disclosure obligations were a key part of the settlement agreements insisted upon by all parties involved." (Armstrong's Separate Statement at ¶ 101) He further stated, "One of the key ingredients to completing these settlements, insisted upon by all parties involved, was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences with the Church of Scientology; (2) any knowledge possessed by the Scientology entities concerning those staff members or parishioners." (*Id.* at ¶ 102) When Heller spoke to Armstrong on November 20, 1989, Heller stated that Scientology had obligations of non-disclosure as well as Armstrong. (*Id.* at ¶ 103)

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[2] *United States v. Zolin*, then Case No. CV 85-0440-HLH (Tx) in the U.S. District Court, Central District of California, which on December 6, 1986 (the date of settlement), was on appeal before the Ninth Circuit. *Armstrong I* was ultimately a subject centrally involved in the Supreme Court opinion reported in *United States v. Zolin* (1989) 109 S.Ct. 2619, 105 L.Ed.2d 469.

Zolin arose from an investigation of L. Ron Hubbard, founder of the Church of Scientology, by Criminal Investigation Division of the Internal Revenue Service ("CID/IRS"). *Id.* 105 L.Ed.2d at 480. In the course of its investigation, the CID/IRS sought access to 49 documents, including two most important tape recordings, that had been filed under seal in *Armstrong I. Id.* 105 L.Ed.2d at 481. Scientology sought to block CID/IRS access to the documents in *Armstrong I* by asserting the attorney-client privilege as a basis for injunctive relief obtained in the United States District Court for the Central District of California. Citing the crime-fraud exception to the privilege, the CID/IRS opposed. The District Court upheld the privilege. On appeal the Ninth Circuit affirmed. *Id.* 105 L.Ed.2d at 481-83. The United States Supreme Court addressed whether the attorney-client privilege between Scientology and some of its attorneys should be abrogated on the basis "that the legal service was sought or obtained in order to enable or aid the client to commit or plan to commit a crime or tort." *Id.* at 105 L.Ed.2d at 489. In *Zolin,* the Supreme Court reversed the Ninth Circuit's ruling, in *United States v. Zolin* (9th Cir. 1987) 809 F.2d 1411, that the Government had not made a sufficient showing that there had been "illegal advice . . . given by [Scientology] attorneys to [Scientology] officials" to invoke the crime-fraud exception to the attorney-client privilege. Upon reversing and remanding, the Supreme Court ordered the Ninth Circuit to review partial transcripts of the tape recordings sought by the IRS in the criminal investigation of Scientology to determine whether the crime-fraud exception to the privilege applied. On remand, the Ninth Circuit held:

> **The partial transcripts demonstrate that the purpose of the [Mission Corporate Category Sort Out] project was to cover up past criminal wrongdoing. The MCCS project involved the discussion and planning for future frauds against the IRS, in violation of 18 U.S.C. ¶ 371. [citation.] The figures involved in MCCS admit on the tapes that they are attempting to confuse and defraud the U.S. Government. The purpose of the crime-fraud exception is to exclude such transactions from the protection of the attorney-client privilege.**

United States v. Zolin (1990) 905 F.2d 1344, 1345 (emphasis added.).

Pursuant to Paragraph 7E(c) of the settlement agreement specifically addressing the MCCS tapes in *Zolin,* the Scientology Organization required Armstrong to "assist [the Scientology Organization] in recovering these documents as quickly as possible, including but not limited to these tapes."

Scientology repeatedly made disparaging and sladerous comment about Armstrong after the settlement agreement. (*Id.* At ¶ 105)

Armstrong is a Christianist who believes in God and in Jesus and in the Bible. (*Id.* at ¶ 147, 157, 159)

Although Scientology pays lip service to being compatible with Christianist teachings, (*Id.* at ¶¶ 160-161), it is anti-christian. (*Id.* At ¶ 162.) Having been secretly taught, an initiated Scientologist beleives that "Christ, God and Heaven are false ideas 'implanted' in humans by electronic means to enslave them." (*Id.* At ¶ 163) Scientology secretly teaches its adherents that its "auditing" procedures are the only way to free mankind from "Christian" slavery and the "Creator of Heaven." (*Id.* At ¶ 164.) Scientology enforces acceptance of its teachings that Christ, God and Heaven are false "implanted" ideas with Scientology's system of "ethics" punishments, its "auditing procedures," and its institutionalized mockery of God and Christ. Any person in Scientology who professed a belief in Christ, or God, or who sought help through prayer, was viewed and handled as a "psychotic." (*Idl.* At ¶ 166) As a Christianist, Armstrong believes that this "blasphemes the Holy Spirit, the one unforgiveable sin." (*Id.* At ¶ 167-169.) There are others who share Armstrong's beliefs. (*Id* at ¶ 169-172.)

III. THE HELLER DECLARATION RAISES TRIABLE ISSUES AS TO WHETHER THE AGREEMENT WAS INTEGRATED AND AS TO THE PARTIES INTENT THAT THE GAG PROVISIONS WERE RECIPROCAL

> "Under California law, '[t]he test of admissibility of intrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the contract is reasonably susceptible.' *Thomas Drayage*, 69 Cal.Rptr. at 564, 442 P.2d at 644. Thus, even if a contract appears to be absolutely clear on its face, the court is required to engage in preliminary consideration of extrinsic evidence to see whether it creates an ambiguity. However, if the extrinsic evidence advances an interpretation to which the contract is not reasonably susceptible, the extrinsic

> evidence is not admissible. [citation] Further, the mere existence of intrinsic evidence supporting an alternative meaning does not foreclose summary judgment where the extrinsic evidence is insufficient to render the contract susceptible to the non-movant's proffered interpretation. [citation]."

Barris Industries, Inc. v. Worldvision Enterprises, Inc. (9th Cir. 1989) 875 F.2d 1446, 1450 citing *P.G. & E. v. G.W. Thomas Drayage* (1968) 69 Cal.2d 33, 39-40; *Aragon-Haas v. Family Security Insurance Services, Inc.* (1991) 231 Cal.App.3d 232, 240; Witkin, California Evidence, Vol. 2, pp 920-923, § 975-977, pp. 929-934, § 983-986.

In addition to Heller's sworn representations that the reciprocal intent of the parties was to maintain reciprocal silence, Armstrong relies on Scientology's breaches of its obligation to maintain such silence as to Armstrong as excusing him from having to comply with the same requirement as to it. (Separate Statement ¶ 105) [3]

Thus, given the fact that CSI's own attorney has stated that the intent of the parties was to remain mutually silent about one another, a "germ of a potential ... defense" has been raised sufficient to defeat summary adjudication. *Jos. Schlitz Brewing Co. v. Downey Distributor* (1980) 109 Cal.App.3d 908, 917; *Classen v. Weller* (1983) 145 Cal.App.3d 27, 39.

Most importantly, Heller's contradictory statements also implicate important public policy considerations as to the integrity of the judiciary and the lawyers who practice within it. Recently, the Second District Court of Appeal applied principles regarding stipulated reversals of judgment to a civil compromise that affected the right of the state to conduct a criminal prosecution. It stated that "When a court determines that a contract is contrary to public policy, it has a duty to refrain from allowing parties to maintain an action based on that contract. *Bovard v. American Horse Enterprises* (1988) 201 Cal.App.3d 832, 838." *People v. Eisenberg* (November 7, 1995) 95 C.D.O.S. 8643, 8644. As in *Eisenberg,* principles regarding stipulated reversals of judgment to a civil compromise are instructive in this case as well.

> The public interest exception to the presumption that requests for stipulated reversal will be granted cannot be defined by formula, though it will be more likely preesent when the judgment in question involves important public rights, unfair, illegal, or corrupt practices, or torts affecting a significant number of persons. Whether a stipulated reversal would deprive the public of an important benefit must in every case be determined "'from a realistic assessment of all the pertinent circumstances.' [Citation.]" (*California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, 745

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[3] Among other things, after the settlement, Scientology stated that Armstrong was a perjuror, contemnor, and admitted agent provacteur of the United States Government. (Separate Statement, ¶ 105 (E).

Norman I. Krug Real Estate v. Praszker (1994) 22 Cal.App.4th 1814, 821.

That the public has an interest in the integrity of the judicial system cannot be disputed. *River West, Inc. V. Nickel* (1987) 188 Cal.App.3d 1297, 1306 ["The preservation of public trust both in the scrupulous administration of justice and in the integrity of the bar is paramount ... public's interest in an untainted judicial system."]

The settlement agreement at issue, by itself, "involves important public rights, unfair, illegal, or corrupt practices, or torts affecting a significant number of persons," but more importantly because it is one component of a poly-dimensional effort by Scientology to buy its way out of accountability for the consequences of its conduct driven by its Fair Game Doctrine. Thus, the agreement violates the "first principle that the people have the right to know what is done in their courts." *Church of Scientology v. Armstrong* (1991) 232 Cal.App.3d 1060, 1068.

Judge Breckenridge's decision was not an isolated abberation. Scientology has a long history of tortious and criminal behavior. [4] With this judicial context, it is inconceivable that there is no question of fact on the issue that Scienbtology's intention as to the settlement agreement at issue was to "buy [its] way out" *People v. Eisenberg* (November 7, 1995) 95 C.D.O.S. 8643, 8644 quoting *Norman I. Krug Real Estate v. Praszker* (1994) 22 Cal.App.4th at 1823, of having to be accountable for the consequences of its conduct with respect to those whom it had in the past, and would in the future, victimize pursuant to its Fair Game

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[4] *Allard v. Church of Scientology* (1976) 58 Cal.App.3d 439, 443, fn. 1, 447 [Fair Game means "that person 'may be deprived of property or injured by any means by any Scientologist without discipline of the Scientologist. May be tricked, sued or lied to or destroyed.' ... Evidence of such policy statements were damaging to [the Church of Scientology], but they were entirely relevant. They were not prejudicial. A party whose reprehensible acts are the cause of harm to another and the reason for the lawsuit by the other cannot be heard to complain that its conduct is so bad that it should not be disclosed." Practice of Fair Game resulted in setting enemy up for criminal conviction.] *Wollersheim v. Church of Scientology of California* (1989) 212 Cal.App.3d 872, 881-891 [Fair Game was modren-day "Christian inquisition" intended to "neutralize" adversary by stripping him of economic and psychological resources.]; *United States v. Kattar* (1st Cir. 1988) 849 F.2d 118, 125-126 [In the late 1970s, the United States successfully prosecuted a number of high-level Scientologist operatives for various crimes involving illegal break-ins, burglaries and wire taps ... The Church according to the U.S. Attorney, 'launched vicious smear campaigns against those perceived to be enemies of Scientology.' The Church's methods for this included subornation of perjury. The memo also acknowledged the existence of the Fair Game Doctrine as the active animating philosophy of the Church."]; *Church of Scientology v. Commissioner* (1984) 83 U.S. Tax Ct. Rpts. 381, 429-442 ["Petitioner [Church of Scientology of California], its agents, and others willfully and knowingly conspired to defraud the United States ... In pursuit of the conspiracy, petitioner filed false tax returns, burglarized IRS offices, stole IRS documents, and harassed, delayed, and obstructed IRS agents who tried to audit the Church's records. Petitioner gave false information to and concealed relevant information from the IRS about its corporate structure ..."]; *United States v. Hubbard* (D.C. 1979) 474 F.Supp. 64, 70-77, 79, 83-84.

Doctrine.

Under this view, the $800,000 that Scientology paid to Armstrong to dismiss his cross-complaint and maintain silence is not a barometer of the depth of Armstrong's disregard of his word to stick to the settlement. [5] It is a barometer of the value which Scientology placed on the suppression of Armstrong's testimony which was "credible, extremely persuasive and ... corroborated by this evidence . . . In all critical and important matters, . . . was precise, accurate, and rang true" regarding a criminal organization. [6] For this Court to particpate in such a corrupt scheme has "dangerous public policy implications" *Ibid.* because the events set forth above "tend to undermine individual security, personal liberty, or private property, or injure the public or the public good." *Church of Scientology v. Armstrong, supra.* 232 Cal.App.3d at 1068. One result is that "public court business is conducted in private [and then] it becomes impossible to expose corruption, incompetence, inefficiency, prejudice, and favoritism." *Ibid.*

Scientology's litigation practices bring the question of judicial corruption into high relief.

On November 14, 1995, in *Church of Scientology International v. Time Warner, Inc.; Time Inc. Magazine Company, and Richard Behar*, the United States District Court, Southern District of New York, Case No. 92 Civ. 30324 (PKL) the court granted summary judgment in favor of Time Magazine as to the following statements:

> In reality the church is a hugely profitable global racket that survives by intimidating members and critics in a Mafia-like manner."
>
> "Says Cynthia Kisser, the [Cult Awareness] network's Chicago-based executive director" 'Scientology is quite likely the most ruthless, the most classically, terroristic, the most litigous cult the

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[5] As Armstrong's evidence has illustrated (Separate Statement at ¶¶ 106, 154, 155), he did keep his word for years until Scientology's betrayal of their promises became completely intolerable.

[6] The nature of Scientology continues to be judicially recognized as a live public controversy of great importance. In his Memorandum Opinion, United States District Court Senior Judge John L. Kane Jr. in *Religious Technology Center v. F.A.C.T.NET, INC.; Lawrence Wollersheim and Robert Penny*, United States District Court for the District of Colorado, Case No. 95-K-2143, filed October 3, 1995, found that

> "The alleged copying by the Defendants was not of a commercial nature. Rather, it was for the non-profit purposes to advance understanding of issues concerning the Church which are the subject of on-going public controversy. ... [¶] Defendants maintain and the evidence does not refute that the Lerma postings to the Internet were made in the context of ongoing dialogue in the particular newsgroup to which they were posted. [T]hey form part of the topical debate concerning whether the Works are of substance or are perpetuated as part of systemic mind control. ... As such, the postings may well be considered as having been made for the purposes of criticism, comment or research falling within the fair use doctrine"

(Armstrong's Request for Judicial Notice, A.)

> country has ever seen. No cult extracts more money from its members.'"
>
> "Those who criticise the church – journalists, doctors, lawyers and even judges so often find themselves engulfed in litigation, stalked by private eyes, framed for fictional crimes, beaten up or threatened with death."

(Request for Judicial Notice, B at p. 7.)

IV. ARMSTRONG IS ENTITLED TO A DECLARATION THAT THE CONTRACT VIOLATES THE FIRST AMENDMENT [7]

Armstrong's exercise of his right as an apostate to criticize his former religion while his former religion not only assails his reputation and character, but also his Christianist religious beliefs is a violation of the First Amendment. The contract forces Armstrong, ultimately upon penalty of imprisonment, to maintain abject silence in the face of a Scientologist attack upon the root's of Armstrong's Christianist beliefs. Such violates two constitutionally essential principles regarding the speech and religion clauses of the First Amendment.

Justice Brandeis best articulated the value of free speech as the necessary predicate and intelligent core of constitutional liberty in his famous concurrence in *Whitney v. California* (1927) 274 U.S. 357, 375:

> "[The Framers of the Constitution] believed the freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law - the argument of force in its worst form."

Justice Cardozo referred to freedom of speech as "the matrix, the indispenible condition, of nearly every other form of freedom." *Palko v. Connecticut* (1937) 302 U.S. 319, 327.

> [The First] Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public ...

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[7] Scientology's motion for summary adjudication directs itself solely to the allegations of paragraph 61 of the cross-complaint. As such it omits addressing the allegations of paragraphs 60 and 63. Paragraph 60 pertains the need for declaration of rights and duties on the issue of the one-sided interepretation of the agreement. Paragraph 63 alleges that Armstrong's exercise of his First Amendment rights are harmed by the contract. There fore summary adjudication of the cross-complaint should be denied because it fails to carry its burden that one or more elements of the cause of action cannot be established or that there is a complete defense to the casue of action. (C.C.P. § 437c (o)(2).)

Citizen Publishing Co. V. United States (1969) 394 U.S. 131, 139-140. The reason for protecting the free flow of information is that "[o]ur system of government requires that we have faith in the ability of the individual to decide wisely, if only he is fully apprised of the merits of a controversy." *Eisenstadt v. Baird* (1972) 405 U.S. 438, 457 (Douglas, J., concurring.)

> "... above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. [Citation.] To permit the continued building of our politics and culture, and to assure self-fulfillment for each individual, our people are guaranteed the right to express any thought, free from government censorship. The essence of this forbidden censorship is content control. Any restriction on expressive activity because of its content would completely undercut the 'profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open.' [Citation.]"

Police Department v. Mosley (1972) 408 U.S. 92, 95-96.

The contract violates the public interest, and eviscerates its own ability to fulfill its purpose - the ascertainment of truth. It asserts the Power of Government upon Armstrong to restrain him from participating in discussion of "noxious doctrine," which is "silence coerced by law – the argument of force in its worst form." *Whitney*, 274 U.S. at 375-376.

There is a "germ of a defense" that the instant setttlement agreement violates the public interest because it allows Scientology to "buy its way out" of accountability for the consequences of acting out its Fair Game Doctrine which can have a devastating impact on"important public rights, unfair, illegal, or corrupt practices, or torts affecting a significant number of persons." Money, even $800,000, cannot be allowed to buy this. If it is, the true doublespeak will be "Justice." Because Scientology is able to "buy away" the legacy of its evil conduct, and continue to use the judicial system as a tool of the destruction of its enemies, Justice will have become Injustice.

In addition to the contract constituting a most egregious prior restraint on pure speech, the nature of the speech which it impacts, is subject to additional First Amendment protection because it is of an independantly religious nature.

Speech about religion is speech entitled to the general protections of the First Amendment. This includes descriptions of religious experiences. *Widmar v. Vincent* (1981) 454 U.S. 263, 269, fn. 6.

> "In the realm of religious faith, and in that of political belief, sharp differecnces arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this

> nation have ordained in the light of history, that, in spite of the probability of excessess and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democrary."

Cantwell v. Connecticut (1940) 310 U.S. 296, 310.

Armstrong beleives that God has sent him to help the "little people" whom Scientology "persecutès." (Separate Statement at ¶¶ 173-175) "It is a function of speech to free men from the bondage of irrational fears." *Whitney, supra.*, 274 U.S. at 376. Thus, to enforce the Scientologist view while prohibiting any expression of the counterbalancing Christianist view, violates Armstrong's right to freely exercise his religion, even if the sum total of that religion is to register his public dissent to the conduct taken in furtherance of the Fair Game Doctrine.

> "Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard. [¶] It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.

West Virginia State Board of Education v. Barnette (1943) 319 U.S. 624, 641.

Armstrong's views on Scientology were sufficiently supported by evidence and conceptually powerful to convince Judge Breckenridge to make the conclusions he did about Scientology. Even if Armstrong's view were to be relegated to the realm of what is eccentric rather than what is effective, the First Amendment would still compel protection against the Court's prior restraint of his speech.

> We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

Id. At 641-642.

Armstrong's position does go to the heart of the existing order because he asserts that no amount of money, not even $1 million, can buy the truth. He says the First Amendment is not for sale. [8]

---

[8] The *ITT Telecom Products Corp. v. Dooley* (1989) 214 Cal.App.3d 307, 319 case is inapposite. Attorney Heller testified that both parties would maintain silence about the other. Thus there is a question of fact as to whether or not Armstrong had voluntarily, knowingly and intelligently agreed that Scientology could say whatever it wanted about him, and that if he said anything back he could be sued, enjoined and jailed. There is no evidence that a constitutional waiver had taken place.

The Fourteenth Amendment supports Armstrong's position.

> The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. ... freedoms of speech and of press, of assembly, and of worship may not be infringed on ... slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect.

Id. 319 U.S. at 639. Armstrong engaging in religious speech regarding Scientology presents no " grave and immediate danger" to the State's interest. The only value which supports the injunction is the right to contract. While not to be belittled, such right is also not ultimate.

Just because citizens contracted to purchase homes with the express covenant that said home would never be sold to Africans was insufficient to enforce such racially restrictive covenants. *Shelley v. Kraemer* (1948) 334 U.S. 1. Judicial action is state action and therefore subject to the requirements of the Fourteenth Amednment. *Id.* At 14-18. Just as Black and White people stand equally before the law, so does the Scientologist and the Christianist. The Scientologist cannot use the law to strip the Christianist of his First Amendment Rights without running afoul of the First and Fourteenth Amendments.

All of the speech which the contract represses is religious in nature because the content of such speech is the criticism of the Scientology religion and its leaders by Armstrong. (Separate Statement ¶138-175) Such prior restraint puts Armstrong in the position that while Scientology may lie about Armstrong to the public, if he in response tells the truth about Scientology, Scientology will have this court jail him for contempt of court. It is the greatest irony that Scientology, a tax-exempt organization that is supposed to benefit the public, has obtained a court order to silence the words of a former member who warns the public of the danger it presents. Such would be a denial of equal protection of the law, not to mention a violation of the First Amendment's establishment clause.

In order to pass muster under the First Amendment's estasblishment clause, the governmental action must pass a three-pronged test.

> "First the [governmental order] must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion ...; finally the [order] must not foster an excessive governmental entanglement with religion."

Lemon v. Kurtzman (1971) 403 U.S. 602, 612-613. Failure of state action to satisfy any one of the criteria requires invalidation. *Edwards v. Aguillard* (1987) 482 U.S. 578, 583. "[G]overnment cannot exert its authority in the domain of religious conviction. Government may not convey any message of 'endorsement or disapproval' of religious activity, or use its 'power [or] prestige ... to control, support or influence' any matter of religious faith." *United Christian Scientists v. First Church of Christ* (1987) 829 F.2d 1152, 1161-1162.

The contract fails the last two prongs of this test. The order advances Scientology's religious purpose while its inhibits Armstrong's. It furthers Scientology's Fair Game Doctrine, allowing it to lie about Armstrong, and inhibits Armstrong's dedication to the truth by silencing him in the face of such lies. The order allows Scientology to propagate its belief that God and Jesus are "implants" to enslave man, while at the same time it censors Armstrong's belief that such is blasphemy.

Finally, the order constitutes an excessive entanglement because if Armstrong's conscience cannot allow him to remain silent in the face of such lies, this court in the enforcement of its order will have to jail him for the act of standing up and speaking his convictions, whether the court considers him to be mad or not. It is inconceivable that in our democratic society the Government will enforce a religious edict by jailing a citizen who dares to speak out against it.

VII. SUMMARY ADJUDICATION SHOULD BE DENIED BECAUSE THE HELLER AND LONG DECLARATIONS RAISE TRIABLE ISSUES REGARDING THE DEFENSE OF UNCLEAN HANDS

Assuming without conceding that as a matter of contractual interpretation CSI was not required to maintain silence as to Armstrong, its actions are such as to create a triable issue regarding the defense of unclean hands. (Separate Statement at ¶ 105, 130) Traditionally, the doctrine of unclean hands is invoked when one seeking relief in equity has violated conscience, good faith or other equitable principles in his prior conduct. Accordingly, one who violates his contract cannot have recourse to equity to support that violation. *Fibreboard Paper Prod. Corp. v. East Bay Union* (1964) 227 Cal.App.2d 675, 727. It is a proper defense in a legal action as well as in equity *Id.* at 728.

> Any unconscientious conduct in the transaction may give rise to the defense. [Citations.] This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. The doctrine is rooted in the historical concept of a court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be 'the abettor of inequity.'"

Burton v. Sosinsky (1988) 203 Cal.App.3d 562, 573-574.

> The equitable principles underlying the clean hands doctrine do not require a finding that Pond was guilty of perjury, concealment or other illegal conduct, '[f]or it is not only fraud or illegality which will prevent a suitor from obtaining equitable relief. *Any unconscientious conduct* upon his part which is connected with the controversy will repel him from the forum whose very foundation is good conscience.

Pond v. Insurance Co. of America (1984) 151 Cal.App.3d 280, 291. The application of the doctrine is primarily a question of fact. *Fibreboard*, 227 Cal.App.2d at 726-727. The defense applies only if the inequitable conduct occurred in a transaction directly related to the matter before the court and affects the equitable relationship between the litigants. *California Satellite Systems, Inc. v. Nichols* (1985) 170 Cal.App.3d 66, 70. The unconscionable conduct must be of such a nature that it would, if permitted to go unnoticed, result in prejudice to the other party. *Soon v. Beckman* (1965) 234 Cal.App.2d 33, 36.

Based on Heller's statements as to the intention of the parties on one hand (Separate Statement ¶ 101, 102), and Scientology's post settlement references to and characterizations of Armstrong as a liar, agent provocateur, and contemnor on the other (*Id.* at ¶105), it is clear that Armstrong has raised a factual issue as to his issue of unclean hands. Scientology cannot state out of one side of its mouth that the keep quiet provisions were mutual and state out of the other side of its mouth the ways in which it says Armstrong is a bad man.

VIII. CONCLUSION

Based on the foregoing points and authorities, defendant Armstrong respectfully submits that the motion for summary adjudication shoul be denied.

DATED: November 17, 1995

HUB LAW OFFICES

By:

FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

ARMSTRONG'S AMENDED MOTION OF MOTION AND MOTION FOR RECONSIDERATION OF GRANT OF SUMMARY JUDGMENT AS TO TWENTIETH CAUSE OF ACTION FOR PERMANENT INJUNCTION; POINTS AND AUTHORITIES; DECLARATION OF FORD GREENE

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

~~BY PERSONAL SERVICE~~

LAURIE J. BARTILSON,ESQ.
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028

BY FAX

[X]	(Personal Service)	I caused such envelope to be delivered by hand to the offices of the addressee.
[X]	(By Mail)	I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.
[X]	(State)	I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: November 16, 1995

9364

Andrew H. Wilson, SBN #063209
WILSON, RYAN & CAMPILONGO
115 Sansome St., 4th Floor
San Francisco, California 94104
(415) 391-3900
Telefax: (415) 954-0938

Laurie J. Bartilson, SBN #139220
MOXON & BARTILSON
6255 Sunset Boulevard, Suite 2000
Hollywood, CA 90028
(213) 960-1936
Telefax: (213) 953-3351

FILED
NOV 22 1995
MARIN COUNTY CLERK
BY: E. Keswick, Deputy

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendants.

CASE NO. 157 680

[CONSOLIDATED]

DECLARATION OF LAURIE J. BARTILSON IN SUPPORT OF CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO ARMSTRONG'S "AMENDED" MOTION FOR RECONSIDERATION OF ENTRY OF PERMANENT INJUNCTION

DATE: December 1, 1995
TIME: 9:00 a.m.
DEPT: 1
JUDGE: Hon. Gary W. Thomas
TRIAL DATE: Vacated

I, LAURIE J. BARTILSON, hereby declare:

1. I am a member of the law firm of Moxon & Bartilson and am an attorney admitted to practice in the State of California. My firm represents plaintiff Church of Scientology International ("Church") in the instant case. I have personal knowledge of

the matters specified in this declaration and, if called upon to testify on such matters, would and could do so competently.

2. On March 2, 1993, plaintiff Church of Scientology International filed its first motion for summary adjudication of its claim for permanent injunction. Armstrong did not respond to that motion; instead he sought and obtained a 14-month stay of the proceedings while he appealed the trial court's Order of Preliminary Injunction. That Order was upheld on appeal on May 16, 1994.

3. On February 23, 1995, plaintiff filed an amended motion for summary adjudication of its claim for permanent injunction. It was originally set for hearing on March 31, 1995. Armstrong filed 3 applications to continue the hearing on the motion to allow himself more time to respond. He fired his attorney, Mr. Greene. Finally, he filed opposing papers -- late -- on April 7, 1995.

4. The day before the Court was set to rule on the amended motion, Armstrong filed a petition for bankruptcy, staying the proceedings, and forcing the Church to obtain relief from stay in order to get a hearing on the pending motion.

5. The motion was re-set for hearing on September 27, 1995. Mr. Greene, returning to the case on Armstrong's behalf, was permitted to file additional opposing papers on September 15, 1995. In addition, Armstrong himself filed further "evidence" in opposition to the motion on September 20, 1995. The Church's application to present additional evidence of Armstrong's most recent breaches of the Agreement was denied.

6. On October 6, 1995, the Court granted the Church's

motion for summary adjudication. I prepared a proposed order and handed it to Mr. Greene in court that very day. I also sent a copy of the proposed order to Mr. Greene by telefax on October 9, 1995. I spoke to Mr. Greene about the proposed order on October 12, 1995. He stated that he had not reviewed the proposed order, and that he did not know when he would get around to doing so. Accordingly, and in accordance with the Court's published procedures, I sent the proposed order to the Court, along with a letter explaining Mr. Greene's refusal to review the order. I sent a copy of that letter to Mr. Greene.

7. The Court's review of the proposed order was thorough. It was rejected by the Court twice: once to remove a paragraph, and once to add some additional identifying language. Finally the Court signed it on October 17, 1995.

8. I am also counsel of record for the Church in Armstrong's bankruptcy action, Church of Scientology International v. Gerald Armstrong, U.S. Bankruptcy Court for the Northern District of California, Case No. 95-10911aj. The adversary complaint in that action has been pending since July 11, 1995. On August 29, 1995, the court set a trial date of February 13, 1996.

9. Attached hereto are true and correct copies of the following documents:

Exhibit A - Declaration of Ford Greene, dated November 2, 1995 and filed in support of Armstrong's Notice of Motion and Motion for Reconsideration of Grant of Summary Adjudication as to Twentieth Cause of Action for Permanent Injunction, in the case herein.

Exhibit B - Complaint to Determine dischargeability and in Objection to Discharge, dated July 11, 1995 and filed in U.S. Bankruptcy Court, Northern District of California, Case No. 95-10911aj.

Exhibit C - Notice of Ruling on Defendant Armstrong's Motion for Stay of Proceedings, dated March 26, 1993, in the case herein.

Exhibit D - Opinion from the California Court of Appeal, Second Appellate District, Division 4, Case No. B069450 and filed May 16, 1994.

Exhibit E - Plaintiff's Notice of Motion and Motion for Summary Adjudication of the Twentieth Cause of Action of Plaintiff's Complaint, dated February 23, 1995, in the case herein.

Exhibit F - Mutual Release of All Claims and Settlement Agreement, executed by Gerald Armstrong on December 6, 1986.

Exhibit G - Armstrong's Memorandum of Points and Authorities in Opposition to Scientology's Motion for a Preliminary Injunction, dated March 16, 1992, in the case herein.

Exhibit H - Excerpt from the deposition transcript of Gerald Armstrong, taken on June 24, 1992 in the case herein.

Exhibit I - Letter from Laurie Bartilson to Ford Greene, dated October 24, 1995.

10. My normal billing rate is $200 per hour, and I have expended 8 hours in preparing this opposition to the motion for reconsideration. If Armstrong requests oral argument for the hearing, I anticipate that I will spend an additional 4 hours traveling to Marin, preparing for, and attending the argument.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 21st day of November, 1995, at Los Angeles, California.

Laurie J. Bartilson

DECLARATION OF FORD GREENE

I, FORD GREENE, declare:

1. I am an attorney licensed to practice law in the courts of the Sate of California and am the attorney of record for Gerald Armstrong, defendant herein.

2. I personally participated in a hearing before the Department 1 of the above Court on Scientology's motion for summary adjudication on its 20th cause of action for a permanent injunction on October 6, 1995. During that hearing I was cut off by the court and prevented from making the appellate record necessary for the proper representation of defendant. A true and correct copy of the transcript of said hearing is attached hereto as Exhibit A.

3. On October 17, 1995, this Court's permanent injunction was filed herein and notice thereof was served by mail on October 18, 1995.

4. The instant motion is brought because the Court cut me off and prevent me from making the record required for appeal and because I believe that this Court's order is, in fact, erroneous.

5. In *In re Gerald Armstrong,* U.S. Bankruptcy Court for the Northern District of California, No. 95-10911, and *Church of Scientology International v. Gerald Armstrong,* U.S. Bankruptcy Court for the Northern District of California, A.P. 95-1164 an order filed October 10, 1995, issued from the U.S. Bankruptcy court in litigation between the same parties herein. A true and correct copy of said order is attached hereto as Exhibit B. Attached hereto as Exhibit C is a true and correct copy of Armstrong's answer in said litigation.

Pursuant to the laws of the State of California and under penalty of perjury I hereby declare that the foregoing is true and correct and that this declaration is executed on November 2, 1995 at San Anselmo, California.

WILSON, RYAN & CAMPILONGO

A PROFESSIONAL LAW CORPORATION

115 SANSOME STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94104
(415) 391-3900
TELECOPY (415) 954-0938

ANDREW H. WILSON
[illegible]PHEN C. RYAN*
[illegible]STOPHER B. TIGNO
ANNE R. KNOWLES
LINDA M. FONG
SHAUNA T. RAJKOWSKI
IAIN-BREAC MacLEOD

*CERTIFIED TAXATION SPECIALIST
THE STATE BAR OF CALIFORNIA
BOARD OF LEGAL SPECIALIZATION

OF COUNSEL
LISA F. CAMPILONGO

9370

July 14, 1995

Laurie Bartilson, Esq.
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

Re: In re: Gerald Armstrong;
US Bankruptcy, Adversary Proceeding Case No. 95 1164;
Our File No. SCI02-003B

Dear Laurie:

Enclosed please find copies of the filed adversary complaint, issued summons, cover sheet, and receipt for the filing fee paid. Please note that the Court set a status conference for August 29, 1995 at 2:00 p.m. Finally, Gerald Armstrong was personally served with these documents on July 13, 1995. If you have any questions, please call.

Very truly yours,

WILSON, RYAN & CAMPILONGO

Shauna T. Rajkowski

STR-1432

cc: Andrew H. Wilson, Esq.

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
115 Sansome Street
Fourth Floor
San Francisco, CA 94104
(415) 391-3900

Laurie J. Bartilson
MOXON & BARTILSON
6255 Sunset Blvd., Suite 2000
Hollywood, CA 90028
(213) 960-1936

Attorneys for Creditor
CHURCH OF SCIENTOLOGY INTERNATIONAL

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re GERALD ARMSTRONG, Debtor	CASE NO. 95-10911 aj Chapter 7 Adv. No.____________
CHURCH OF SCIENTOLOGY INTERNATIONAL, a California non-profit religious corporation, Plaintiff, v. GERALD ARMSTRONG, Defendant.	COMPLAINT TO DETERMINE DISCHARGEABILITY AND IN OBJECTION TO DISCHARGE [11 U.S.C. §§ 727(a)(4)(A); 727(a)(5); 523(a)(2); and 523(a)(6).]

Church of Scientology International ("CSI"), plaintiff, and creditor of the above-named debtor, Gerald Armstrong ("Armstrong") in a sum in excess of $1,000,000 alleges:

INTRODUCTION

1. Debtor Armstrong has engaged in a pattern of fraud and deceit that mandates dismissal of his bankruptcy petition without discharge, or, alternatively, that his debt to plaintiff be deemed nondischargeable. First, he has lied to this Court, the

trustee and his creditors by failing to include, as part of his Schedule B, his ownership in the Gerald Armstrong Corporation. In 1993, Armstrong testified that the assets of the Gerald Armstrong Corporation were worth $1 billion. In 1994, Armstrong admitted under oath that he owned 80% of the shares of the stock in the corporation, and was its president and sole employee. Second, while testifying at a meeting of creditors, Armstrong asserted that the Gerald Armstrong Corporation no longer possessed any assets having any commercial value. Armstrong has failed to satisfactorily explain how he disposed of not only the $1 billion in assets claimed by the Gerald Armstrong Corporation, but also $518,000 of the $800,000 which he received as proceeds of a legal settlement, and at least $15,000 which he received in large increments in 1992 and 1993. These actions render Armstrong ineligible for discharge pursuant to 11 U.S.C. §§ 727(a)(4)(A) and (5). Third, Armstrong has also admitted under oath that he entered into an agreement with CSI in 1986, which he intended to breach, and which he has in fact repeatedly and maliciously breached, resulting in the debt to CSI which he now seeks to discharge. These actions render Armstrong's debt to CSI nondischargeable pursuant to 11 U.S.C. §§ 523(a)(2) and (6).

JURISDICTION

2. This is an adversary proceeding in the debtor's Case No. 95-10911 aj under Chapter 7 of Title 11 of the United States Bankruptcy Code, now pending in this Court. This Court has jurisdiction of this adversary proceeding pursuant to 11 U.S.C. §§ 727, 523 and 365. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(I) and (J).

3. Defendant Armstrong is not eligible for discharge as a debtor in his bankruptcy action pursuant to 11 U.S.C. §§ 727(a)(4)(A) and (5). Armstrong is also indebted to plaintiff creditor as fully detailed below, and the debt is not dischargeable in bankruptcy by virtue of the provisions of 11 U.S.C. §§ 523(a)(2) and (6).

PARTIES

4. Plaintiff Church of Scientology International ("CSI") is, and was at all times relevant herein, a California non-profit religious corporation having its principal office in the City of Los Angeles, County of Los Angeles, State of California.

5. Defendant Gerald Armstrong is an individual who at all times relevant herein has been a resident of the City of San Anselmo, County of Marin, State of California.

GENERAL AVERMENTS

6. Armstrong's debt to CSI arises in the context of an ongoing state court action for breach of contract, Church of Scientology International v. Gerald Armstrong, Marin County Superior Court, Case No. 157 680 ("the State Court Action"). CSI obtained summary adjudication of two of its claims in that action on January 27, 1995, resulting in a judgment against Armstrong of $100,000. Eleven claims against Armstrong for breach of contract remain to be adjudicated, with additional liability claimed of $1,750,000 plus contractual attorneys' fees and costs. In addition, the Church is seeking a permanent injunction prohibiting Armstrong from further breaching certain terms of the contract.

7. The contract which forms the basis of the State Court

Action was entered into by Armstrong and CSI in December, 1986 ("the Agreement"). A true and correct copy of the Agreement is attached hereto as Exhibit A. It settled outstanding litigation between CSI and Armstrong according to certain terms and conditions. Armstrong has admitted that the settlement proceeds which he received were $800,000, and that he received $518,000 after paying attorneys' fees and expenses.

8. Pursuant to the Agreement, Armstrong, who had been actively pursuing a career as an anti-Scientology "expert" and paralegal, agreed, inter alia, that he would not disclose his knowledge of or experiences in Scientology to anyone, and would not voluntarily aid other litigants or would-be litigants in anti-Scientology litigation. (Agreement, ¶¶ 7(D), 7(G), 7(H) and 10). The Agreement also provided that Armstrong would pay CSI $50,000 in liquidated damages for every prohibited disclosure.

9. In February, 1992, CSI brought the State Court Action against Armstrong, alleging that he had repeatedly breached the provisions of the Agreement delineated in Paragraph 8, supra. CSI sought and obtained a preliminary injunction enforcing portions of the Agreement.

10. Armstrong claims that in August, 1990, he was directed by God to give away his material assets. He transferred real property valued at approximately $530,000 and at least $35,000 in cash to his friend and lawyer, Michael Walton. He also claims that he forgave an outstanding debt to Walton of $30,000. Armstrong further claims that he forgave other debts to friends and family members totalling approximately $133,000 and gave away additional cash totalling $1,500. Armstrong has asserted under

oath that he received no valuable consideration for any of these transfers. Although he was asked to do so in the State Court Action, Armstrong has not produced any records of any of these transactions, other than a few documents concerning the transfer of the real property to Walton.

11. In or about August, 1987, Armstrong incorporated a California corporation which he called the Gerald Armstrong Corporation ("GAC"). Armstrong was the only incorporator, officer, and director of the corporation.

12. Armstrong testified in the State Court Action that, on incorporation, GAC issued a single share of stock to a single shareholder: Gerald Armstrong. Armstrong also testified that he transferred significant personal assets to GAC in 1988, including personal and intellectual property. Armstrong has testified that in August, 1990, the value of GAC's assets was $1,000,000. He based this figure on an appraisal of some of Armstrong's works owned by GAC, which he testified were independently valued at $900,000. In addition, in August, 1990, Armstrong listed the following personal property as further assets of GAC: office equipment, office furniture, four filing cabinets and contents, photocopier, drafting table, drafting machine, MAC and Image Writer II, VCR, opaque projector, projector table, Morantz portable twin head recorder, microphone, 2 sets of headphones, 3 chests of drawers, futon frame, cover, linen, futon, pillows, Chines rug and 2 rockers.

13. Armstrong claimed, under oath in the State Court action, that GAC "possesses a number of Gerald Armstrong's artistic and literary works, possesses rights to a number of his

inventions and rights to certain formulas, and is in the business of bringing peace and exploiting its assets for commercial and peaceful purposes." He also testified that GAC owns "equipment and products." The business of GAC, according to Armstrong, is to care for, promote and exploit "the works of Gerald Armstrong."

14. Armstrong testified in the State Court Action that in August, 1990, at the same time that he made the transfers described in paragraph 10, supra, he transferred his ownership in GAC to Michael Walton, Michael Douglas, Lorien Phippeny and Nancy Rhodes. According to Armstrong, his single share of stock was divided into 100 shares, and each of the four received 25 shares. Walton, Douglas, Phippeny and Rhodes paid Armstrong nothing for the shares of stock.

15. Shortly after making the transfers referred to in paragraphs 10 and 14, supra, Armstrong initiated successive breaches of the Agreement, which resulted in the filing of the State Court Action. When Armstrong disclosed the transfers in the State Court Action, CSI brought a fraudulent conveyance action against Armstrong and Michael Walton. That action was consolidated into the State Court Action in September, 1994.

16. Armstrong admitted in deposition in the State Court Action that he reacquired the shares of stock in GAC which he had distributed to Walton, Douglas, Phippeny and Rhodes. In October, 1992, Armstrong testified that GAC had 9 shareholders. He owned 80 shares. Single shares were owned by Armstrong's friends and relatives, Michael Douglas, Michael Walton, Andrew Armstrong, Thomas McPherson, Joseph Yanny, Michael Dick, Trevor and Colin Dick, and Anthony Armstrong. In 1993, GAC issued a single share

to Armstrong's brother, Andrew Armstrong. In 1994, GAC issued a single share to Armstrong's brother, Anthony Armstrong. Armstrong testified again in 1994 that he owned 80% of GAC's stock.

17. Armstrong has testified, in deposition in the State Court Action, that he is currently the President, and only officer, of GAC, one of its two directors, and its only employee. In 1993, he testified that GAC has a single bank account, and that he was the sole signatory on that account.

18. In March, 1993, Armstrong testified under oath that he estimated the value of the assets owned by GAC to be $1,000,000,000 to $1,500,000,000.

19. In May, 1995, at an early meeting of creditors, Armstrong testified under oath that GAC no longer possessed any assets of commercial value.

FIRST CLAIM FOR RELIEF

(For a Determination That Armstrong's Debts Are Not Dischargeable Pursuant to 11 U.S.C. §727(a)(4)(A))

20. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 19 above as though set forth fully herein.

21. On April 18, 1995, Armstrong filed a Voluntary Petition for Bankruptcy with this court. He swore under penalty of perjury that the information which he provided in the Petition was true and correct. On Schedule B of his Petition, Line 12, Armstrong stated that he owned no stock or interests in incorporated or unincorporated businesses. CSI is informed and believes, and therefore alleges that on April 18, 1995, Armstrong

owned and still owns at least 80% of the stock of the Gerald Armstrong Corporation. 22. CSI is informed and believes and therefore alleges that GAC is, and at all times relevant herein was, operated by and for the benefit of Gerald Armstrong as his alter ego. The alleged corporate form of GAC should, accordingly, be disregarded, and GAC's assets considered the assets of Armstrong.

23. Armstrong's failure to include his ownership of GAC in Schedule B is a deliberate omission of a material matter constituting a false oath or account in connection with the case.

24. Armstrong failed to disclose his ownership of GAC and its assets with the intent to mislead creditors and the trustee as to the debtor's true financial condition, or with reckless disregard for the truth with regard to a matter material to the case.

SECOND CLAIM FOR RELIEF

(For a Determination That Armstrong's Debts Are Not Dischargeable Pursuant to 11 U.S.C. §727(a)(5))

25. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 24 above as though set forth fully herein.

26. In 1986, Armstrong received a substantial sum of money from CSI in settlement of litigation. Armstrong has testified under oath that he invested the money in real property and GAC, and that GAC, set up solely to exploit Armstrong and his literary and artistic ventures, prospered. He has claimed, under oath in the State Court Action, that GAC's assets were valued, in 1990, at $1 million, and, in 1993, he valued them at $1 billion to $1.5

billion.

27. In 1993, Armstrong received 3 large payments from sources unknown to plaintiff totalling $15,000.

28. Armstrong's Bankruptcy Petition claims assets of $6,485, and liabilities of $1,005,367.52. At the meeting of creditors, on May 17, 1995, Armstrong claimed under oath that GAC possessed no assets of any commercial value.

29. Armstrong has offered no satisfactory explanation for his claimed losses of $518,000 since 1986, $1 million since 1990, $15,000 since 1993, or $1 billion to $1.5 billion since 1994.

THIRD CLAIM FOR RELIEF

(For a Determination That Armstrong's Debt To CSI Is Not Dischargeable Pursuant to 11 U.S.C. §523(a)(2))

30. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 19 above as though set forth fully herein.

31. CSI entered into the Agreement with Armstrong in 1986 in good faith, and performed its part of the Agreement in full.

32. Armstrong falsely represented to CSI when he entered into the Agreement that he understood and agreed to every provision of the Agreement. He and his attorney met with a CSI representative and CSI's attorney, and Armstrong, laughing and joking, initialed each page of the Agreement, and signed it happily.

33. Armstrong has stated repeatedly under oath in the State Court Action that, at the time that he entered into the Agreement with CSI, he did not believe that the nondisclosure provisions of the Agreement were enforceable and binding on him, and that he

did not intend to abide by these portions of the Agreement if they proved inconvenient to him.

34. Armstrong has stated repeatedly under oath that he was "heartsick" concerning the nondisclosure provisions in the Agreement, and that he merely "put on a happy face" for the signing of the Agreement in order to persuade CSI to enter into the Agreement and pay him his settlement.

35. CSI reasonably relied on Armstrong's representations that was entering into the Agreement in good faith, and that he (a) had read the entire Agreement, (b) agreed with all of its provisions, (c) intended to abide by it in its entirety and (d) entered into it voluntarily and on the advice of independent counsel.

36. Had CSI known that Armstrong did not intend to abide by the nondisclosure provisions contained in the Agreement, CSI would not have entered into the Agreement with Armstrong, and would not have paid him $800,000.

37. Armstrong's conduct at the time that he entered into the Agreement with CSI constitutes false pretenses and/or false representations, which Armstrong knew to be false and/or which Armstrong made with reckless disregard as to their truth or falsity.

FOURTH CLAIM FOR RELIEF

(For a Determination That Armstrong's Debt To CSI Is Not Dischargeable Pursuant to 11 U.S.C. §523(a)(6))

38. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 37 above as though set forth fully herein.

39. After Armstrong transferred and/or hid his assets in 1990, he set out on a course of conduct intended deliberately to damage and harass CSI. For years, and despite ongoing litigation, Armstrong has deliberately and repeatedly violated his Agreement not to discuss his claimed Scientology knowledge and experiences, and he has done so with the intent and purpose of impeding, injuring and destroying CSI and the Scientology faith. Since August, 1990, he has spoken negatively to the media about Scientology at least 21 times; made an anti-Scientology videotape; prepared and offered for sale a treatment for an anti-Scientology screenplay; gone to work for three different anti-Scientology attorneys, etc., all as set forth in plaintiff's Second Amended Complaint in the State Court Action.

40. Armstrong's anti-Scientology actions are both deliberate and malicious. When they began, Armstrong asked CSI to pay him additional funds to keep silent. Armstrong's anti-Scientology campaign escalated when CSI refused. They did not halt even when the State Court issued a summary adjudication order against Armstrong for $100,000.

WHEREFORE, plaintiff prays for the entry of judgment against defendant as follows:

1. That the Court determine that the debts of defendant be ruled nondischargeable as a result of defendant's knowingly and fraudulently making a false oath in connection with a bankruptcy case by virtue of the provisions of 11 U.S.C. § 727(a)(4)(A); and

2. That the Court determine that the debts of defendant be ruled nondischargeable as a result of defendant's failure to satisfactorily explain his loss of and/or deficiency of assets by

virtue of the provisions of 11 U.S.C. § 727(a)(5); or in the alternative

3. That the Court determine that the debt owed to plaintiff by defendant as a result of defendant's false pretenses and/or false representations, upon which plaintiff relied to its detriment, and as a result of defendant's wilful and malicious injury to plaintiff, is nondischargeable by virtue of the provisions of 11 U.S.C. §§ 523(a)(2) and (a)(6);

4. For an award of attorney's fees as allowable by law in an amount the Court determines to be reasonable;

5. For costs of suit herein incurred; and

6. For such other and further relief as this Court deems just and proper.

DATED: July __, 1995

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

MOXON & BARTILSON

By: ______________________
Laurie J. Bartilson

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

Ford Greene, Esquire
California State Bar No. 107601
HUB LAW OFFICES
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
Telephone: (415) 258-0360

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, CA 90272
(310) 459-4745

Attorneys for Defendant
GERALD ARMSTRONG

COPY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation;

Plaintiffs,

vs.

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendants.

No. **BC 052395**

NOTICE OF RULING ON DEFENDANT ARMSTRONG'S MOTION FOR STAY OF PROCEEDINGS

Discovery Cut Off: Vacated
Motion Cut Off: Vacated
Trial Date: Vacated

On March 23, 1993, the motion by Defendant Gerald Armstrong for a stay of proceedings, or in the alternative, for an extension of time to oppose motions for summary adjudication, came before Department 30 of the above-entitled Court, the Honorable David A. Horowitz, presiding. Plaintiff Church of Scientology International was represented by Wilson, Ryan & Campilongo, Andrew H. Wilson appearing, and by Bowles & Moxon, Laurie J. Bartilson appearing. Defendant Gerald Armstrong was represented by Ford Greene. After consideration of all the papers filed in support of and in opposition to Defendant Armstrong's motion and after considering the arguments of counsel, the Court ordered as follows:

1. Defendant's motion for stay of proceedings in Department 30 of the trial court is **GRANTED** on the grounds set forth in the Court's Minute Order issued March 23, 1993, a true and correct copy of which is attached hereto and incorporated herein by reference.

2. Counsel are **ORDERED** to report, in writing, any decision by the Court of Appeal to Department 30 within one day of the issuance of the opinion on Defendant Armstrong's appeal of the preliminary injunction issued by the Honorable Ronald M. Sohigian on May 28, 1992.

3. Any and all matters set in Department 30, including but not limited to the motions set for March 31, 1993, the Final Status Conference of April 23, 1993, and Trial of May 3, 1993, are advanced and **VACATED**.

4. Defendant is to give notice.

DATED: March 26, 1993

By: ______________________
FORD GREENE

By: ______________________
PAUL MORANTZ
Attorneys for Defendant

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: NOTICE OF RULING ON DEFENDANT ARMSTRONG'S MOTION FOR STAY OF PROCEEDINGS

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, CA 90272

[x] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[x] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: March 26, 1993

DEPT. 30

9386

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date March 23, 1993

Honorable	DAVID A. HOROWITZ	, Judge	S. ROBLES	, Deputy Clerk
		, Deputy Sheriff	B. CHARLINE HOWELL	, Reporter
8	C. AGUIRRE	, C. S. L.		, E/R Monitor

BC052395

(Parties and Counsel checked if present)

CHURCH OF SCIENTOLOGY, ETC	Counsel For Plaintiff	LAURIE BARTILSON (x) ANDREW WILSON (x)
VS GERALD ARMSTRONG	Counsel For Defendant	FORD GREENE (x)

NATURE OF PROCEEDINGS:

MOTION OF DEFENDNAT, GERALD ARMSTRONG, FOR STAY OR IN THE ALTERNATIVE, FOR AN EXTENSION OF TIME TO OPPOSE MOTIONS FOR SUMMARY ADJUDICATION;

D, Mot for stay of proceedings GRANTED. The action is stayed under CCP 916. Counsel are ordered to report any decision by the Court of Appeal to this Department, in writing, within one day of the issuance of the opinion so that this Court may lift the stay.

"...an appeal stays proceedings in the trial court upon the ..order appealed from or upon the matters embraced therein or affected thereby..." CCP 916. As the Church has stated in its Summary Adjudication motions, "The facts are undisputed, however, that Armstrong has breached the Agreement repeatedly and deliberately. Because of these breaches, a preliminary injunction was issued by the Court on May 28, 1992." Obviously, the validity of the Agreement is the basis for the preliminary injunction. One of the basis for the appeal is an attack on the legality and validity of the Agreement.

The central issue of this case is the legality and validity of the Agreement. The Court of Appeal could certainly reach that issue in its determination of the validity of the injunction. If it does, that ruling could be determinative of many of the issues of this case. It makes no sense to proceed with this matter until the Court of Appeal makes its ruling.

Any and all matters set in this department, including but not limited to the Motions set for 3/31/93, the Final Status Conference of 4/23/93 and the Trial of 5/3/93, are each advanced and vacated.

Defendant shall give notice.

Minutes Entered: March 23, 1993 **Dept. 30**

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

CHURCH OF SCIENTOLOGY INTERNATIONAL,
Plaintiff and Respondent,
v.
GERALD ARMSTRONG,
Defendant and Appellant.

No. B069450
(Super.Ct.No. BC052395)

COURT OF APPEAL - SECOND DIST.
FILED
MAY 16 1994
JOSEPH A. LANE Clerk
Deputy Clerk

APPEAL from an order of the Superior Court of Los Angeles County, Ronald M. Sohigian, Judge. Affirmed.

Ford Greene and Paul Morantz for Defendant and Appellant.

Bowles & Moxon, Karen D. Holly, Wilson, Ryan & Campilongo, Andrew H. Wilson, Rabinowitz, Boudin, Standard, Krinsky & Lieberman, Eric M. Lieberman, and Michael Lee Hertzberg for Plaintiff and Respondent.

Defendant and appellant Gerald Armstrong (Armstrong) appeals from an order granting a preliminary injunction restraining Armstrong from voluntarily giving assistance to other persons litigating or intending to litigate claims against plaintiff and respondent Church of Scientology International (Church).

The injunction was granted to enforce a settlement agreement in prior litigation between Armstrong and Church. In the settlement, Armstrong agreed he would not voluntarily assist other persons in proceedings against Church.

Armstrong does not deny violating his agreement but asserts numerous reasons why his agreement should not be enforceable. We conclude that the narrowly-limited preliminary injunction, which did not finally adjudicate the merits of Armstrong's claims, was not an abuse of the trial court's discretion to make orders maintaining the status quo and preventing irreparable harm pending the ultimate resolution of the merits.

FACTUAL AND PROCEDURAL BACKGROUND

Armstrong was a member of Church between 1969 and 1981. He became an insider of high rank, familiar with Church practices and documents. He became disillusioned and left Church in 1981. When he left, he took many Church documents with him.

The Prior Action and Settlement

Church brought the prior action against Armstrong seeking return of the documents, injunctive relief against further dissemination of information contained in them, and imposition of a constructive trust. Mary Sue Hubbard, wife of Church founder L. Ron Hubbard, intervened asserting various torts against Armstrong. Armstrong filed a cross-complaint seeking damages for fraud, intentional infliction of emotional distress, libel, breach of contract, and tortious interference with contract.

Church's complaint and Hubbard's complaint in intervention were tried in 1984 by Judge Breckenridge. That trial led to a judgment, eventually affirmed on appeal, holding Armstrong's conversion of the documents was justified because he believed the conversion necessary to protect himself from Church's claims that he had lied about Church matters and L. Ron Hubbard. (Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1063, 1073.)

Armstrong's cross-complaint in that case was settled in December 1986 by the settlement agreement which is the subject of the injunction in the present case.

In the settlement agreement, the parties mutually released each other from all claims, except the then-pending appeal of Judge Breckenridge's decision on Church's complaint, which was expressly excluded. The settlement involved a number of persons engaged in litigation against Church, all represented by Attorney Michael Flynn. As a result of the settlement, Armstrong was paid $800,000. Armstrong's cross-complaint was dismissed with prejudice, as agreed, on December 11, 1986.

The portions of the settlement agreement most pertinent to this appeal are paragraphs 7-G, 7-H, and 10, in which Armstrong agreed not to voluntarily assist other persons intending to engage in litigation or other activities adverse to Church.[1]

---

[1] "G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology. [¶] H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed. [¶] . . . 10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement."

Paragraph 20 of the agreement authorizes its enforcement by injunction.

The Present Action

In February 1992, Church filed a complaint in the present action alleging Armstrong's violation of the settlement agreement and seeking damages and injunctive relief.

In support of its motion for a preliminary injunction, Church presented evidence that since June 1991 Armstrong had violated the agreement by working as a paralegal for attorneys representing clients engaged in litigation against Church and by voluntarily and gratuitously providing evidence for such litigation. Armstrong worked as a paralegal for Attorney Joseph Yanny, who represented Richard and Vicki Aznaran in a multimillion dollar suit against Church in federal court. Armstrong also voluntarily provided declarations for use in the Aznarans' case. Armstrong thereafter worked for Attorney Ford Greene on the Aznaran and other Church related matters.

Armstrong did not deny the charged conduct but asserted the settlement agreement was not enforceable for various reasons, primarily that it was against public policy and that he signed it under duress.

The Trial Court's Preliminary Injunction

The trial court granted a limited preliminary injunction, with exceptions which addressed Armstrong's argument that the settlement agreement violated public policy by requiring suppression of evidence in judicial proceedings.

The court found that Armstrong voluntarily entered the settlement agreement for which he received substantial compensation, and that Armstrong was unlikely to prevail on his duress claim. The court found that Armstrong could contract as part of the settlement to refrain from exercising various rights which he would otherwise have. Balancing the interim harms to the parties, the court found that to the extent of the limited acts covered by the preliminary injunction, Church would suffer irreparable harm which could not be compensated by monetary damages, and harm for which monetary damages would be difficult to calculate. (Code Civ. Proc., § 526, subds. (a)(2), (a)(4), (a)(5).)

The court's order provides, in pertinent part: "Application for preliminary injunction is granted in part, in the following respects only. [¶] Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following: [¶] Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it. [¶] Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986."

The court provided the following exceptions to address Armstrong's public policy arguments: "The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order."

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/

/

DISCUSSION

The grant of a preliminary injunction does not adjudicate the ultimate rights in controversy between the parties. It merely determines that the court, balancing the relative equities of the parties, concludes that, pending a trial on the merits, the defendant should be restrained from exercising the right claimed. The purpose of the injunction is to preserve the status quo until a final determination of the merits of the action. (Continental Baking Co. v. Katz (1968) 68 Cal.2d 512, 528.)

The court considers two interrelated factors. The first is the likelihood the plaintiff will prevail at trial. The second is the interim harm the plaintiff is likely to sustain if the injunction is denied, as compared to the harm the defendant is likely to suffer if the injunction is granted. (Cohen v. Board of Supervisors (1985) 40 Cal.3d 277, 286.)

The decision to grant or deny a preliminary injunction rests in the discretion of the trial court. Accordingly, an appellate court's review on appeal from the granting of a preliminary injunction is very limited. The burden is on the appellant to make a clear showing that the trial court abused its discretion. (IT Corp. v. County of Imperial (1983) 35 Cal.3d 63, 69; Nutro Products, Inc. v. Cole Grain Co. (1992) 3

Cal.App.4th 860, 865.) Abuse of discretion means the trial court has exceeded the bounds of reason or contravened the uncontradicted evidence. (IT Corp. v. County of Imperial, supra, 35 Cal.3d at p. 69.)

Here, the trial court's memorandum decision reflects very careful consideration of the factors relevant to the granting of a preliminary injunction. The court weighed the relative harms to the parties and balanced the interests asserted by Armstrong. The court granted a limited preliminary injunction with exclusions protecting the countervailing interests asserted by Armstrong. We find no abuse of discretion. We cannot say that the trial court erred as a matter of law in weighing the hardships or in determining there is a reasonable probability Church would ultimately prevail to the limited extent reflected by the terms of the preliminary injunction.

Although Armstrong's "freedom of speech" is affected, it is clear that a party may voluntarily by contract agree to limit his freedom of speech. (See In re Steinberg (1983) 148 Cal.App.3d 14, 18-20 [filmmaker agreed to prior restraint on distribution of film]; ITT Telecom Products Corp. v. Dooley (1989) 214 Cal.App.3d 307, 319 [employee's agreement not to disclose confidential information; "it is possible to waive even First Amendment free speech rights by contract"]; Snepp v. United States (1980) 444 U.S. 507, 509, fn. 3 [book by CIA employee subject to prepublication clearance by terms of his employment contract].)

The exceptions in the trial court's injunction assured that the injunction would not serve to suppress evidence in legal proceedings. The injunction expressly did not restrain Armstrong from accepting service of subpenas, testifying fully and fairly in legal proceedings, and reporting criminal conduct to the authorities. (See Philippine Export & Foreign Loan Guarantee Corp. v. Chuidian (1990) 218 Cal.App.3d 1058, 1081-1082.) This contrasts with the stipulation in Mary R. v. B. & R. Corp. (1983) 149 Cal.App.3d 308, 315-316, cited by Armstrong, which prevented a party from disclosing misconduct to regulatory authorities.

This appeal is only from the granting of a preliminary injunction which expressly did not decide the ultimate merits. As limited by the trial court here, the preliminary injunction merely restrains, for the time being, Armstrong's voluntary intermeddling in other litigation against Church, in violation of his own agreement. We decline any extended discussion of Armstrong's shotgun-style brief, which offers more than a dozen separate contentions against enforcement. It suffices to say that Armstrong has not borne his burden on appeal to demonstrate a clear abuse of discretion.

DISPOSITION

The order granting a preliminary injunction is affirmed.

NOT TO BE PUBLISHED

VOGEL (C.S.), Acting P.J.

We concur:

HASTINGS, J.

KLEIN (Brett), J.*

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*Assigned by the Chairperson of the Judicial Council.

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 4 DATE: 05/16/94

Bowles & Moxon
Laurie J. Bartilson
6255 Sunset Blvd
Suite 2000
Hollywood, CA. 90028

RE: Church of Scientology International
vs.
Armstrong, Gerald
2 Civil B069450
Los Angeles NO. BC052395

Andrew H. Wilson, SBN 063209
WILSON, RYAN & CAMPILONGO
115 Sansome Street
Fourth Floor
San Francisco, California 94104
(415) 391-3900
Telefax: (415) 954-0938

Laurie J. Bartilson, SBN 139220
MOXON & BARTILSON
6255 Sunset Boulevard, Suite 2000
Hollywood, CA 90028
(213) 960-1936
Telefax: (213) 953-3351

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendants.

CASE NO. BC 157680

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR SUMMARY ADJUDICATION OF THE TWENTIETH CAUSE OF ACTION OF PLAINTIFF'S COMPLAINT

DATE: March 31, 1995
TIME: 9:00 a.m.
DEPT: 1

DISCOVERY
CUT-OFF: March 16, 1995
MTN CUT-OFF: April 18, 1995
TRIAL DATE: May 18, 1995

PLEASE TAKE NOTICE that on March 31, 1995, at 9:00 a.m., or as soon thereafter as may be heard in Department 1 of the above-entitled Court located at Hall of Justice, 3501 Civil Cir. Dr., San Rafael, California, plaintiff Church of Scientology International ("the Church") will move this Court to issue an order granting summary adjudication of plaintiff's Twentieth Cause of Action (for permanent injunction for breach of contract) in favor of the

Church, pursuant to California Code of Civil Procedure Section 437c. This Motion is made on the grounds that there is no triable issue of any material fact relevant to plaintiff's claim for injunctive relief, and that the Church is entitled to judgment on the Twentieth Cause of Action as a matter of law.

This Motion is based on this Notice of Motion and Motion, the pleadings, records and files herein, the accompanying Memorandum of Points and Authorities, the declarations and exhibits filed herewith, the accompanying Separate Statement of Undisputed Material Facts, and such other evidence as may be adduced properly at the hearing of this Motion.

Dated: February 23, 1995

Respectfully submitted,

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

MOXON & BARTILSON

By: ______________________
Laurie J. Bartilson

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On February 23, 1995, I served the foregoing document described as PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR SUMMARY ADJUDICATION OF THE TWENTIETH CAUSE OF ACTION OF PLAINTIFF'S COMPLAINT on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 94939

[x] BY FAX AND MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[x] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an

affidavit.

Executed on February 23, 1995 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on ___________ at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Laurie J. Bartilson
Print or Type Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT

1. This Mutual Release of All Claims and Settlement Agreement is made between Church of Scientology International (hereinafter "CSI") and Gerald Armstrong, (hereinafter "Plaintiff") Cross-Complainant in Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153. By this Agreement, Plaintiff hereby specifically waives and releases all claims he has or may have from the beginning of time to and including this date, including all causes of action of every kind and nature, known or unknown for acts and/or omissions against the officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel of CSI as well as the Church of Scientology of California, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Religious Technology Center, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; all Scientology and Scientology affiliated organizations and entities and their officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Author Services, Inc., its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and its trustee; and Mary Sue Hubbard, (all hereinafter collectively referred to as the

EXHIBIT A

"Releasees"). The parties to this Agreement hereby agree as follows:

2. It is understood that this settlement is a compromise of doubtful and disputed claims, and that any payment is not to be construed, and is not intended, as an admission of liability on the part of any party to this Agreement, specifically, the Releasees, by whom liability has been and continues to be expressly denied. In executing this settlement Agreement, Plaintiff acknowledges that he has released the organizations, individuals and entities listed in the above paragraph, in addition to those defendants actually named in the above lawsuit, because among other reasons, they are third party beneficiaries of this Agreement.

3. Plaintiff has received payment of a certain monetary sum which is a portion of a total sum of money paid to his attorney, Michael J. Flynn. The total sum paid to Mr. Flynn is to settle all of the claims of Mr. Flynn's clients. Plaintiff's portion of said sum has been mutually agreed upon by Plaintiff and Michael J. Flynn. Plaintiff's signature below this paragraph acknowledges that Plaintiff is completely satisfied with the monetary consideration negotiated with and received by Michael J. Flynn. Plaintiff acknowledges that there has been a block settlement between Plaintiff's attorney, Michael J. Flynn, and the Church of Scientology and Churches and entities related to the Church of Scientology, concerning all of Mr. Flynn's clients who were in litigation with any Church of Scientology or related entity. Plaintiff has received a portion of this block

amount, the receipt of which he hereby acknowledges. Plaintiff understands that this amount is only a portion of the block settlement amount. The exact settlement sum received by Plaintiff is known only to Plaintiff and his attorney, Michael J. Flynn, and it is their wish that this remain so and that this amount remain confidential.

Signature line for Gerald Armstrong

4. For and in consideration of the above described consideration, the mutual covenants, conditions and release contained herein, Plaintiff does hereby release, acquit and forever discharge, for himself, his heirs, successors, executors, administrators and assigns, the Releasees, including Church of Scientology of California, Church of Scientology International, Religious Technology Center, all Scientology and Scientology affiliated organizations and entities, Author Services, Inc. (and for each organization or entity, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel); L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and trustee; and Mary Sue Hubbard, and each of them, of and from any and all claims, including, but not limited to, any claims or causes of action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153 and all demands, damages, actions and causes of actions of every kind and nature, known or unknown,

for or because of any act or omission allegedly done by the Releasees, from the beginning of time to and including the date hereof. Therefore, Plaintiff does hereby authorize and direct his counsel to dismiss with prejudice his claims now pending in the above referenced action. The parties hereto will execute and cause to be filed a joint stipulation of dismissal in the form of the one attached hereto as Exhibit "A".

A. It is expressly understood by Plaintiff that this release and all of the terms thereof do not apply to the action brought by the Church of Scientology against Plaintiff for Conversion, Fraud and other causes of action, which action has already gone to trial and is presently pending before the Second District, Third Division of the California Appellate Court (Appeal No. B005912). The disposition of those claims are controlled by the provisions of the following paragraph hereinafter.

B. As of the date this settlement Agreement is executed, there is currently an appeal pending before the California Court of Appeal, Second Appellate District, Division 3, arising out of the above referenced action delineated as Appeal No. B005912. It is understood that this appeal arises out of the Church of Scientology's complaint against Plaintiff which is not settled herein. This appeal shall be maintained notwithstanding this Agreement. Plaintiff agrees to waive any rights he may have to take any further appeals from any decision eventually reached by the Court of Appeal or any rights he may have to oppose (by responding brief or any other means) any further appeals taken by the Church of

Scientology of California. The Church of Scientology of California shall have the right to file any further appeals it deems necessary.

5. For and in consideration of the mutual covenants, conditions and release contained herein, and Plaintiff dismissing with prejudice the action Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153, the Church of Scientology of California does hereby release, acquit and forever discharge for itself, successors and assigns, Gerald Armstrong, his agents, representatives, heirs, successors, assigns, legal counsel and estate and each of them, of and from any and all claims, causes of action, demands, damages and actions of every kind and nature, known or unknown, for or because of any act or omission allegedly done by Gerald Armstrong from the beginning of time to and including the date hereof.

6. In executing this Agreement, the parties hereto, and each of them, agree to and do hereby waive and relinquish all rights and benefits afforded under the provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

7. Further, the undersigned hereby agree to the following:

A. The liability for all claims is expressly denied by the parties herein released, and this final compromise and settlement thereof shall never be treated as an admission of liability or responsibility at any time for any purpose.

B. Plaintiff has been fully advised and understands that the alleged injuries sustained by him are of such character that the full extent and type of injuries may not be known at the date hereof, and it is further understood that said alleged injuries, whether known or unknown at the date hereof, might possibly become progressively worse and that as a result, further damages may be sustained by Plaintiff; nevertheless, Plaintiff desires by this document to forever and fully release the Releasees. Plaintiff understands that by the execution of this release no further claims arising out of his experience with, or actions by, the Releasees, from the beginning of time to and including the date hereof, which may now exist or which may exist in the future may ever be asserted by him or on his behalf, against the Releasees.

C. Plaintiff agrees to assume responsibility for the payment of any attorney fee, lien or liens, imposed against him past, present, or future, known or unknown, by any person, firm, corporation or governmental entity or agency as a result of, or growing out of any of the matters referred to in this release. Plaintiff further agrees to hold harmless the parties herein released, and each of them, of and from any liability arising therefrom.

D. Plaintiff agrees never to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other similar form, any writing or to broadcast or to assist another to create, write, film or video tape or audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff expressly understands that the non-disclosure provisions of this subparagraph shall apply, inter alia, but not be limited, to the contents or substance of his complaint on file in the action referred to in Paragraph 1 hereinabove or any documents as defined in Appendix "A" to this Agreement, including but not limited to any tapes, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard, or any of the organizations, individuals, or entities listed in Paragraph 1 above. The attorneys for Plaintiff, subject to the ethical limitations restraining them as promulgated by the state or federal regulatory associations or agencies, agree not to disclose any of the terms and conditions of the settlement negotiations, amount of the settlement, or statements made by either party during settlement conferences. Plaintiff agrees that if the terms of this paragraph are breached by him, that CSI and the other Releasees would be entitled to liquidated damages in the amount of $50,000 for each such breach. All monies received to induce or in payment for a breach of this Agreement, or any part thereof, shall be held in a constructive trust pending the outcome of any litigation over said breach. The amount of liquidated damages herein is an estimate of the damages that each party would suffer in the event this Agreement is breached. The reasonableness of the amount of such damages are hereto acknowledged by Plaintiff.

E. With exception to the items specified in Paragraph 7(L), Plaintiff agrees to return to the Church of Scientology International at the time of the consummation of this Agreement, all materials in his possession, custody or control (or within the possession, custody or control of his attorney, as well as third parties who are in possession of the described documents), of any nature, including originals and all copies or summaries of documents defined in Appendix "A" to this Agreement, including but not limited to any tapes, computer disks, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above, all evidence of any nature, including evidence obtained from the named defendants through discovery, acquired for the purposes of this lawsuit or any lawsuit, or acquired for any other purpose concerning any Church of Scientology, any financial or administrative materials concerning any Church of Scientology, and any materials relating personally to L. Ron Hubbard, his family, or his estate. In addition to the documents and other items to be returned to the Church of Scientology International listed above and in Appendix "A", Plaintiff agrees to return the following:

(a) All originals and copies of the manuscript for the work "Excalibur" written by L. Ron Hubbard;

(b) All originals and copies of documents commonly known as the "Affirmations" written by L. Ron Hubbard; and

(c) All documents and other items surrendered to the Court by Plaintiff and his attorneys pursuant to Judge Cole's orders of August 24, 1982 and September 4, 1982 and all documents and other items taken by the Plaintiff from either the Church of Scientology or Omar Garrison. This includes all documents and items entered into evidence or marked for identification in Church of Scientology of California v. Gerald Armstrong, Case No. C 420 153. Plaintiff and his attorney will execute a Joint Stipulation or such other documents as are necessary to obtain these documents from the Court. In the event any documents or other items are no longer in the custody or control of the Los Angeles Superior Court, Plaintiff and his counsel will assist the Church in recovering these documents as quickly as possible, including but not limited to those tapes and other documents now in the possession of the United States District Court in the case of United States v. Zolin, Case No. CV

85-0440-HLH(Tx), presently on appeal in the Ninth Circuit Court of Appeals. In the event any of these documents are currently lodged with the Court of Appeal, Plaintiff and his attorneys will cooperate in recovering those documents as soon as the Court of Appeal issues a decision on the pending appeal.

To the extent that Plaintiff does not possess or control documents within categories A-C above, Plaintiff recognizes his continuing duty to return to CSI any and all documents that fall within categories A-C above which do in the future come into his possession or control.

F. Plaintiff agrees that he will never again seek or obtain spiritual counselling or training or any other service from any Church of Scientology, Scientologist, Dianetics or Scientology auditor, Scientology minister, Mission of Scientology, Scientology organization or Scientology affiliated organization.

G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology.

H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed.

I. The parties hereto agree that in the event of any future litigation between Plaintiff and any of the organizations, individuals or entities listed in Paragraph 1 above, that any past action or activity, either alleged in this lawsuit or activity similar in fact to the evidence that was developed during the course of this lawsuit, will not be used by either party against the other in any future litigation. In other words, the "slate" is wiped clean concerning past actions by any party.

J. It is expressly understood and agreed by Plaintiff that any dispute between Plaintiff and his counsel as to the proper division of the sum paid to Plaintiff by his attorney of record is between Plaintiff and his attorney of record and shall in no way affect the validity of this Mutual Release of All Claims and Settlement Agreement.

K. Plaintiff hereby acknowledges and affirms that he is not under the influence of any drug, narcotic, alcohol or other mind-influencing substance, condition or ailment such that his ability to fully understand the meaning of this Agreement and the significance thereof is adversely affected.

L. Notwithstanding the provisions of Paragraph 7(E) above, Plaintiff shall be entitled to retain any artwork created by him which concerns or relates to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above provided that such artwork never be disclosed either directly or indirectly, to anyone. In the event of a disclosure in breach of this Paragraph 7(L), Plaintiff shall be subject to the liquidated damages and constructive trust provisions of Paragraph 7(D) for each such breach.

8. Plaintiff further agrees that he waives and relinquishes any right or claim arising out of the conduct of any defendant in this case to date, including any of the organizations, individuals or entities as set forth in Paragraph 1 above, and the named defendants waive and relinquish any right or claim arising out of the conduct of Plaintiff to date.

9. This Mutual Release of All Claims and Settlement Agreement contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital. This Agreement may be amended only by a written instrument executed by Plaintiff and CSI. The parties hereto have carefully read and understand the contents of this Mutual Release of All Claims and Settlement Agreement and sign the same of their own free will, and it is the intention of the parties to be legally bound hereby. No other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically

incorporated herein shall be deemed to in any way exist or bind any of the parties hereto.

10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement.

11. The parties to this Agreement acknowledge the following:

A. That all parties enter into this Agreement freely, voluntarily, knowingly and willingly, without any threats, intimidation or pressure of any kind whatsoever and voluntarily execute this Agreement of their own free will;

B. That all parties have conducted sufficient deliberation and investigation, either personally or through other sources of their own choosing, and have obtained advice of counsel regarding the terms and conditions set forth herein, so that they may intelligently exercise their own judgment in deciding whether or not to execute this Agreement; and

C. That all parties have carefully read this Agreement and understand the contents thereof and that each reference in this Agreement to any party includes successors, assigns, principals, agents and employees thereof.

12. Each party shall bear its respective costs with respect to the negotiation and drafting of this Agreement and

all acts required by the terms hereof to be undertaken and performed by that party.

13. To the extent that this Agreement inures to the benefit of persons or entities not signatories hereto, this Agreement is hereby declared to be made for their respective benefits and uses.

14. The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

15. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared this Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

16. In the event any provision hereof be unenforceable, such provision shall not affect the enforceability of any other provision hereof.

17. All references to the plural shall include the singular and all references to the singular shall include the plural. All references to gender shall include both the masculine and feminine.

18.(A) Each party warrants that they have received independent legal advice from their attorneys with respect to the advisability of making the settlement provided for herein and in executing this Agreement.

(B) The parties hereto (including any officer, agent, employee, representative or attorney of or for any party) acknowledge that they have not made any statement, representation or promise to the other party regarding any fact material to this Agreement except as expressly set forth herein. Furthermore, except as expressly stated in this Agreement, the parties in executing this Agreement do not rely upon any statement, representation or promise by the other party (or of any officer, agent, employee, representative or attorney for the other party).

(C) The persons signing this Agreement have the full right and authority to enter into this Agreement on behalf of the parties for whom they are signing.

(D) The parties hereto and their respective attorneys each agree not to disclose the contents of this executed Agreement. Nothing herein shall be construed to prevent any party hereto or his respective attorney from stating that this civil action has been settled in its entirety.

(E) The parties further agree to forbear and refrain from doing any act or exercising any right, whether existing now or in the future, which act or exercise is inconsistent with this Agreement.

19. Plaintiff has been fully advised by his counsel as to the contents of this document and each provision hereof. Plaintiff hereby authorizes and directs his counsel to dismiss with prejudice his claims now pending in the action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153.

20. Notwithstanding the dismissal of the lawsuit pursuant to Paragraph 4 of this Agreement, the parties hereto agree that the Los Angeles Superior Court shall retain

jurisdiction to enforce the terms of this Agreement. This Agreement may be enforced by any legal or equitable remedy, including but not limited to injunctive relief or declaratory judgment where appropriate. In the event any party to this Agreement institutes any action to preserve, to protect or to enforce any right or benefit created hereunder, the prevailing party in any such action shall be entitled to the costs of suit and reasonable attorney's fees.

21. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date opposite their names.

Dated: December 6, 1986

GERALD ARMSTRONG

Witness

Witness

Dated: 12/6/86

APPROVED AS TO FORM AND CONTENT:

M. J. Flynn
MICHAEL J. FLYNN
Attorney for
GERALD ARMSTRONG

Dated: December 11, 1986

Heber C. Jentzsch for
CHURCH OF SCIENTOLOGY
INTERNATIONAL

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APPENDIX A

1. As used herein, the term "document" or "documents" include but are not limited to all originals, file copies and copies not identical to the original, no matter how prepared, of all writings, papers, notes, records, books and other tangible things including, by way of example and not of limitation, the following:

a. Memoranda, notes, calendars, appointment books, shorthand or stenographer's notebooks, correspondence, letters and telegrams, whether received, sent, filed or maintained internally;

b. Drafts and notes, whether typed, penciled or otherwise, whether or not used;

c. Minutes, reports and summaries of meetings;

d. Contracts, agreements, understandings, commitments, proposals and other business dealings;

e. Recordings, transcriptions and memoranda or notes made of any telephone or face-to-face oral conversations between or among persons;

f. Dictated tapes or other sound recordings;

g. Computer printouts or reports and the applicable program or programs therefor;

h. Tapes, cards or any other means by which data are stored or preserved electrically, electronically, magnetically or mechanically, and the applicable program or program therefor (from which plaintiff may reproduce or cause to be reproduced such data in written form);

i. Pictures, drawings, photographs, charts or other graphic representations;

j. Checks, bills, notes, receipts, or other evidence of payment;

k. Ledgers, journals, financial statements, accounting records, operating statements, balance sheets and statements of account.

9420

HUB LAW OFFICES
Ford Greene, Esquire
California State Bar No. 107601
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
Telephone: (415) 258-0360

Attorney for Defendant
GERALD ARMSTRONG

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation; Plaintiffs, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	No. 152 229 **ARMSTRONG'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO SCIENTOLOGY'S MOTION FOR A PRELIMINARY INJUNCTION** Date: March 20, 1992 Time: 9:00 a.m. Dept: 4 - Specially Set

COPY

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someone or something was or was not adverse to, or aligned agains Scientology. The agreement is not specifically enforceable because not only would it be impossible for the Court to decipher the ambiguities inherent in the agreement; even if it could rationally construe the agreement, it could never enforce it.

Additionally, since it would be impossible for the Court to enforce the agreement, it is not appropriate for the Court to issue an injunction.

e. Since There Is No Mutuality Of Remedy, Specific Performance Will Not Lie

In bilateral contract, such as the agreement herein, mutuality of obligation and remedy is necessary because of mutual promises. The doctrine requires that the promises on each side must be binding obligations in order to be consideration for each other. Mattei v. Hooper (1958) 51 Cal.2d 119, 122, 330 P.2d 625; Larwin-Southern Calif. v. JGB Inv. Co. (1979) 101 Cal.App.3d 606, 637, 162 Cal.Rptr. 52. In order for the agreement to be obligatory on either party, it must be mutual and reciprocal in its obligations. Harper v. Goldschmidt (   ) 156 Cal. 245, 104 P. 451.

Paragraphs 4A and 4B of the agreement prohibit Armstrong from litigating Scientology's complaint against him on appeal while allowing Scientology to litigate the matter in the appellate courts to the extent it desired.

Paragraph 7D prohibited Armstrong from speaking to others about Scientology, but does not prohibit Scientology from talking to others about Armstrong.

Paragraph 7E required Armstrong to deliver documents about

IN AND FOR THE SUPERIOR COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

--oOo--

CERTIFIED COPY

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

Case No. BC 052395

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendants.

DEPOSITION OF
GERALD ARMSTRONG

Wednesday, June 24, 1992

REPORTED BY: SUSAN M. SKIGEN, CSR #5829

sold yoᴗ ɜt; right?

A. I don't think I ever have used those words and I won't now because Michael Flynn was under the same pressure that I was under. He really had been attacked, you know, and I don't fault Michael Flynn, although it sure hurt.

I really fault the organization for using Michael Flynn as a vehicle to get to me. I mean, that's just corrupt, for them to play with him at all to get to me, his client, it's corruption.

And what were they doing with him, he was going to settle his case and they were going to end the attacks on him. Whereas he gives me a contract which says on its face they can continue to attack you with impunity, Mr. Armstrong.

Q. And --

A. Who but a madman would sign such a document?

Q. And at the time you got that agreement you recognized that problem with it, that it didn't prohibit them from saying whatever they wanted about you; right?

A. Well, I also understood from basic understanding and from talking to Michael Flynn that as soon as they open their mouth and say one word, they've waived it, you have a new unit of time, they've violated it, that's it, you're free to talk, you can respond because you cannot, this does not have to do with future acts.

It does not say specifically they are free to, they will interpret it that way. And I recognize that as soon as I hear that they've dumped documents on the L.A. Times, soon as I know that they've filed all sorts of false most scurrilous statements about me in the high court in London, I know that that's going on.

MR. GREENE: Just a second. Let me take about a two minute break.

MR. WILSON: Sure. Go ahead. Any time you want to.

(Short recess.)

MR. WILSON: Okay.

MR. GREENE: I don't think you want the last answer.

(Pending question read by the reporter.)

MR. WILSON: No, I don't.

Let's mark this.

MR. GREENE: Did we mark No. 6, just for the record? I know you asked him some questions based on it, but I don't know if it actually got into the record as identified as being six?

MR. WILSON: Yes, it did.

MR. GREENE: Okay. Thanks.

MR. WILSON: Q. After how long did this meeting with Mr. Flynn and Mr. Walters take approximately?

A. My best recollection is half an hour.

Q. And was Mr. Walters there the whole time?

A. I believe so.

Q. Where did it take place?

A. It was in a hotel in Westwood.

Q. Okay.

A. And I don't recall the name of it.

Q. Have you given us your best recollection of everything that happened at that meeting as far as you can remember now?

A. I've given you a recollection of everything in answer to your questions. I don't know if I can come up with more just like that.

Q. You testified that the liquidated damages provision was discussed; right?

A. Right.

Q. And Mr. Flynn told you that that was unenforceable; right?

A. Right. I mean, I, I had seen that, in fact, I had signed documents like that inside the organization, so I knew that they were unenforceable.

MOXON & BARTILSON
ATTORNEYS AT LAW
6255 SUNSET BOULEVARD
SUITE 2000
HOLLYWOOD, CALIFORNIA 90028
TELEPHONE (213) 960-1936
TELECOPIER (213) 953-3351

KENDRICK L. MOXON

ALSO ADMITTED IN
THE DISTRICT OF COLUMBIA

LAURIE J. BARTILSON

ALSO ADMITTED IN
MASSACHUSETTS

9426

October 24, 1995

BY TELEFAX AND U.S. MAIL

Ford Greene, Esq.
Hub Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, California 94960-1949

Re: Church of Scientology International v. Gerald Armstrong
MSC 157 680

Dear Mr. Greene:

Yesterday, I received the enclosed letter from your client, Gerald Armstrong. Since the bulk of the letter concerns the above case, rather than his bankruptcy, I am directing my correspondence to you.

The language contained in the permanent injunction identifying parties and actions was specifically requested and reviewed by Judge Thomas. I believe that it is extremely clear and comprehensive, and more than adequate to fully place you and Mr. Armstrong on notice of each mandated or prohibited act. Making the lists Mr. Armstrong requests would be pointless, because the injunction is permanent, and covers all of the officers, directors, agents, volunteers, employees, counsel and assigns of each entity regardless of the changes which naturally occur over time. Mr. Armstrong has repeatedly argued that "the Organization" is just one large entity, anyway, so I doubt any court would seriously entertain an argument from him that he "did not think" that a particular church was a Scientology affiliated Church, organization of entity.

If Mr. Armstrong has any doubt as to whether or not a particular person or group falls into any of those categories, he has only to ask before he takes any action. Indeed, if he simply refrains from discussing Scientology, as ordered in paragraph 5 of the injunction, and from aiding anyone in any dispute with a Scientology affiliated entity, it is doubtful that he could find himself in any difficulty at all.

Judge Thomas considered that both you and your client were intelligent enough to read his very clear order of injunction and manage to obey it. I am certain that his assessment of your relative intelligence is accurate.

Kindly advise me when you intend to provide me with a return of all copies of non-filed materials as dictated by paragraph 1, page 8 of the injunction.

Sincerely,

MOXON & BARTILSON

Laurie J. Bartilson

LJB:aeu

cc: Andrew H. Wilson, Esq.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of California, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevar, Suite 2000, Hollywood, CA 90028.

On November 21, 1995 I served the foregoing document described as DECLARATION OF LAURIE J. BARTILSON IN SUPPORT OF CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO ARMSTRONG'S "AMENDED" MOTION FOR RECONSIDERATION OF ENTRY OF PERMANENT INJUNCTION on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 94939

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on November 21, 1995 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such --

envelopes by hand to the offices of the addressees.

Executed on ________________, at _____________, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Matt Ward
Print or Type Name

Matt Ward
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

PROOF OF SERVICE

I declare that I am employed in the City and County of San Francisco, California.

I am over the age of eighteen years and not a party to the within entitled action. My business address is 115 Sansome Street, Suite 400, San Francisco, California.

On November 22, 1995, I caused the attached copy of **DECLARATION OF LAURIE J. BARTILSON IN SUPPORT OF CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO ARMSTRONG'S "AMENDED" MOTION FOR RECONSIDERATION OF ENTRY OF PERMANENT INJUNCTION** on the following in said cause, by placing for deposit with Lightning Express Messenger Service on this day in the ordinary course of business, true copies thereof enclosed in a sealed envelope. The envelope was addressed as follows:

Gerald Armstrong
715 Sir Francis Drake Blvd.
San Anselmo, California 94960

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on November 22, 1995.

Colleen Y. Palmer
COLLEEN Y. PALMER